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No. 1973

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD. (IN FOUR VOLUMES.)

THE LINN & LANE TIMBER COMPANY and
CHARLES A. SMITH,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

VOLUME I.

(Pages 1 to 336, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Oregon.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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(Title of Court and Cause.)

Names and Addresses of the Attorneys of Record.

Mr. JOHN LIND, Mr. A. UELAND and Mr. W. M. JEROME, Minneapolis, Minnesota, and DOLPH, MALLORY, SIMON & GEARIN, Portland, Oregon, for Appellants,
Mr. JOHN McCOURT, United States Attorney, Portland, Oregon, for Appellee.

(Title of Court and Cause.)

Stipulation as to Printing of Record.

It is hereby stipulated between the appellants, by their solicitors and counsel, and the appellee by the United States Attorney for the District of Oregon, as follows:

1. If the appellants be so advised they may cause the transcript on the appeal in the above-entitled cause to be printed, certified and filed in said Court of Appeals as provided by the Act of February 13, 1911, and the order or rule of the Supreme Court promulgated March 13, 1911, the appellee hereby waiving all objections for noncompliance with Rule 23 of said Court of Appeals and all objections by reason of no rule having been adopted by the Circuit Court for the District of Oregon, as contemplated by said Act; and if appellants be so advised they may, without further notice, apply to said Circuit Court for a rule or order authorizing said transcript to be printed, certified and filed as in this paragraph provided.

2. But if the appellants be so advised, they may have said transcript printed as now provided by said

Rule 23 of said Court of Appeals.

3. It is agreed that whether the printing of said transcript be done in accordance with paragraph 1 or in accordance with paragraph 2 hereof, the following parts thereof may be omitted in said printing, to wit:

Praeceptum of appearance for Frederick A. Kribs found on page 23; U. S. Exhibits 164 to 167, inclusive, found on pages 956 to 969, inclusive; notice to certain defendants to join in appeal, found on pages 1411 to 1414; certificate in blank of Stephen Sanford, found on page 1239 and the title of the case except in the original bill, the amended bill and the opinion of the Court, and whenever the title is so omitted, there shall be printed in place thereof “(Title of Court and Cause).”

Dated April 3d, 1911.

JOHN McCOURT,

United States Attorney for the District of Oregon.

JOHN LIND,

A. UELAND,

JOHN M. GEARIN,

Solicitors and Counsel for said Appellants.

[Endorsed]: No. 1973. In the Circuit Court of Appeals, for the Ninth Circuit. The United States of America, Plaintiff, vs. Nels O. Werner, Chas. A. Smith et al., Defendants. Stipulation. Filed Apr. 5, 1911. F. D. Monekton, Clerk.

**[Order Extending Time to File Transcript in U. S.
Circuit Court of Appeals.]**

(Title of Court and Cause.)

Now at this day comes the complainant by Mr. John McCourt, the United States Attorney for said District of Oregon, and the defendants Charles A. Smith, and Linn & Lane Timber Company, by Mr. John M. Gearin and Mr. A. Ueland, of counsel, and thereupon this cause comes on to be heard upon the motion of said defendants Charles A. Smith and Linn & Lane Timber Company, for an extension of time in which to file a transcript therein in the United States Circuit Court of Appeals for the Ninth Circuit, and counsel consenting thereto, it is ordered that the time heretofore granted in which to file said transcript in said United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to June 1st, 1911.

Dated March 27th, 1911.

WM. B. GILBERT,

Judge United States Circuit Court of Appeals for the
Ninth Circuit.

[Endorsed]: No. 1973—C. C. A. No. 3320. In the Circuit Court of the United States for the District of Oregon. United States of America, Complainant, vs. Nels O. Werner, Chas. A. Smith, et al., Defendants. Order Extending Time to File Transcript. Filed Apr. 5, 1911. F. D. Monckton, Clerk.

Citation on Appeal [Original].

No. 3320.

United States of America,
District of Oregon,—ss.

To United States of America, Greeting:

Whereas, The Linn & Lane Timber Company and Charles A. Smith have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the Circuit Court of the United States for the District of Oregon, in your favor, and has given the security required by law: You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 7th day of March, in the year of our Lord, one thousand nine hundred and eleven.

R. S. BEAN,
Judge. [1*]

Due service of the foregoing Citation on Appeal is admitted this March 7th, 1911.

JOHN McCOURT,
U. S. Attorney.

[Endorsed]: No. 3320. United States Circuit Court, District of Oregon. United States of America, Complainant, vs. Nels O. Werner et al., Defend-

[*Page number appearing at foot of page of original certified record.]

ants. Citation on Appeal. Filed March 7, 1911.
G. H. Marsh, Clerk.

*In the Circuit Court of the United States for the
District of Oregon.*

April Term, 1908.

Be it remembered, that on the 25th day of May,
1908, there was duly filed in the Circuit Court of the
United States for the District of Oregon, a Bill of
Complaint, in words and figures as follows, to
wit: [2]

*In the Circuit Court of the United States, for the
District of Oregon.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

NILS O. WERNER and EVA C. WERNER, His
Wife, THE FIRST TRUST AND SAV-
INGS BANK OF ILLINOIS, ROBERT E.
GREACEN, HUBERT E. ROGERS, JOHN
A. WILLD, C. A. SMITH, FREDERICK A.
KRIBS, STEPHEN A. D. PUTER, JOHN
L. GREEN, THOMAS WILSON, CHARLES
BARR, CHARLES BURLEY, NEAL D.
DOZIER, HARRY SALTMARSH, HARRY
C. BARR, EDWARD FINLEY, JOHN J.
JAGGY, J. S. PHILLIPS, ZEBULIN
SMITH, DOUGLAS ADKINSON, SADIE
E. PUTER, ELVIRA S. JACOBS, ISAAC
R. BORUM, BENJAMIN F. KIRK,
GEORGE L. THOMPSON, PETER BUF-

FINGTON, JOHN HARRISON, JENNIE
MOULTON, JACOB W. STILLWELL,
HENRY BLAKELY, ELAM MILLER,
FRANK W. BURFORD, JAMES B.
COOLEY, LUELLA BEEMAN and HUGH
BLAKELY,

Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the
United States of America, for the District of
Oregon, in Chancery Sitting:

Your orator, the United States of America, by and
under the authority and direction of the Attorney
General of the United States, brings this bill in
equity against the above-named defendants, and each
of them, and thereupon your orator complains of said
defendants respectively, and shows unto your Hon-
ors:

I.

That the First Trust and Savings Bank of Illinois
was at all the dates and times hereinafter mentioned,
and is now, a corporation duly organized and existing
under and by virtue of the laws of the State of Illi-
nois. [3]

II.

That the defendants Nils O. Werner and Eva C.
Werner are, and were at all the times hereinafter
mentioned, husband and wife.

III.

That the complainant is now, and was until the
dates and times herein mentioned, the owner of the
following described lands and premises, situate in the
county of Linn, State and District of Oregon, and

had the full legal title thereto at all said dates and times prior to the 12th day of August, 1902, which said lands were, until the times herein mentioned, part of the public domain of the United States of America, and are particularly bounded and described as follows, to wit:

“The South $\frac{1}{2}$ of Section 24, Township 14 South, Range 2 East of the Willamette Meridian; all of Section 14; North $\frac{1}{2}$ of Section 20; Northwest $\frac{1}{4}$ and Southeast $\frac{1}{4}$ of Section 22; West $\frac{1}{2}$ of Section 24; Northwest $\frac{1}{4}$ of Section 28; Northeast $\frac{1}{4}$ of Section 31, and all of Sections 34 and 35, in Township 14 South, Range 3 East of the Willamette Meridian; the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 18, the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 25, the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 28, West $\frac{1}{2}$ of the West $\frac{1}{2}$ of Section 29, all of Sections 30 and 31, and the West $\frac{1}{2}$ of Section 32; all in Township 14 South, Range 4 East of the Willamette Meridian, situate in the Roseburg Land District of the State of Oregon.”

IV.

That from and after the 12th day of August, 1902, the complainant still continued to be, and is now, the owner of the equitable title to all of said above described lands.

V.

Your orator further shows unto your Honors that some time prior to the month of June, 1900, and for many years prior thereto, the above-described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to entry and sale in conformity with the

land laws of the United States. [4]

VI.

Your orator further shows unto your Honors that some time prior to the month of February, 1900, the above-named defendants, S. A. D. Puter, C. A. Smith, Nils O. Werner, John A. Willd, Robert F. Greacen Hubert E. Rogers and Frederick A. Kribs, together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above-described lands, and in and by said conspiracy and agreement it was understood and agreed that the said S. A. D. Puter should solicit and procure persons to make applications and entries, together with and in addition to himself, upon the lands above described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said S. A. D. Puter should, prior to procuring and obtaining such persons to file upon said lands, as aforesaid, enter into an agreement with each of said persons so to be procured and obtained to file upon said lands, as aforesaid, in and by which said agreement each of said persons so filing on said land promised and agreed that the title which he or she might acquire from the Government of the United States should inure to the benefit of the said defendant C. A. Smith, or some other of the defendants above named in this paragraph, and that as soon as such applicant should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such

applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendants C. A. Smith or John A. Willd [5] a warranty deed, conveying said lands to the said C. A. Smith or the said John A. Willd, and would execute and deliver to the defendants Frederick A. Kribs or S. A. D. Puter the note of the applicant for \$600.00, due ninety days after date and secured by mortgage upon the lands so filed upon by such applicant, and the said defendant, S. A. D. Puter should promise each of said applicants, upon behalf of himself and said defendants C. A. Smith, Frederick A. Kribs, John A. Willd, Nils O. Werner, Robert F. Greacen and Hubert E. Rogers to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendant S. A. D. Puter at the time proof and cash entries should be made.

VII.

That thereafter, on and between the 19th day of January, 1900, and the 26th day of February, 1900, pursuant to said unlawful conspiracy and agreement, hereinbefore set forth, the defendant S. A. D. Puter solicited and procured the defendants hereinafter named to make applications to purchase and enter the lands hereinafter described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States

Land Office at Roseburg, Oregon, and the said S. A. D. Puter also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter said lands filed a statement in duplicate, verified by the oath of such applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and [6] in the manner hereinafter set forth:

Timber and Stone Sworn Statement No. 770, by S. A. D. Puter, for the Northwest $\frac{1}{4}$ of Section 20, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 797, by John L. Green, for the Northwest $\frac{1}{4}$ of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 800, by Charles Barr, for the Southwest $\frac{1}{4}$ of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 799, by Charles Burley, for the Southeast $\frac{1}{4}$ of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 779, by Neal D. Dozier, for the Southwest $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 816, by Harry Saltmarsh, for the Northwest $\frac{1}{4}$ of Section 24, Township 14 South, Range 3 East of the Willamette

Meridian, filed February 1st, 1900.

Timber and Stone Sworn Statement No. 769, by H. C. Barr, for the Southeast $\frac{1}{4}$ of Section 24, Township 14 South, Range 2 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 777, by John J. Jaggy, for the Southeast $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 801, by Edward Finley, for the Northeast $\frac{1}{4}$ of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 798, by J. S. Phillips, for the Northeast $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 780, by Zebulin Smith, for the Northeast $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 814, by Douglas Adkinson, for the Southwest $\frac{1}{4}$ of Section 24, Township 14 South, Range 3 East of the Willamette Meridian, filed February 1st, 1900. [7]

Timber and Stone Sworn Statement No. 763, by Sadie E. Puter, for the Northeast $\frac{1}{4}$ of Section 20, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 764, by Mrs. Elvira Jacobs, for the Northwest $\frac{1}{4}$ of Section 22, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 870, by I. R. Borum, for the Southwest $\frac{1}{4}$ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 871, by Benjamin F. Kirk, for the Northeast $\frac{1}{4}$ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 869, by George L. Thompson, for the Northwest $\frac{1}{4}$ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 879, by Peter Buffington, for the Southeast $\frac{1}{4}$ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 876, by John Harrison, for Lot 1, North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 30, and the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 872, by Thomas Wilson, for the Northwest $\frac{1}{4}$ of Section 28, Township 14 South, Range 3 East of the Willamette Meridian, filed January 22nd, 1900.

Timber and Stone Sworn Statement No. 867, by Mrs. Jennie Moulton, for the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 880, by Jacob W. Stillwell, for Lot 1, and the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 31; the Northwest $\frac{1}{4}$ of the

Northwest $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 878, by Henry B. Blakely, for Lot 3 and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 30, and the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 882, by Elam Miller, for the Northeast $\frac{1}{4}$ of Section 31, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 875, by Frank W. [8] Burford, for Lot 2 and the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 31, and the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 874, by James B. Cooley, for Lot 3 and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 31, and the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 868, by Mrs. Luella Beeman, for Lot 4 and the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 31, and the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 873, by Hugh Blakely, for Lot 4 and the South $\frac{1}{2}$ of the

Southeast $\frac{1}{4}$ of Section 30, and the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

VIII.

Your orator further shows unto your Honors and alleges: That, pursuant to said unlawful conspiracy and agreement, each of said applicants to purchase and enter timber lands, mentioned and described in the last preceding paragraph of this bill, with the exception of the defendant S. A. D. Puter, prior to making or filing his or her application to purchase and enter said lands, made and entered into a contract and agreement with the said S. A. D. Puter, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants C. A. Smith, Frederick A. Kribs, Nils O. Werner, John A. Willd, Robert E. Greacen and Hubert E. Rogers, or some of them, whom the said S. A. D. Puter was then and there representing and acting for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer, convey and set over said lands, by warranty deed, to the said C. A. Smith or John A. Willd, and to execute and deliver to the said defendants S. A. D. Puter or Frederick A. Kribs the promissory note of such applicant, payable ninety days after date, and secured [9] by a mortgage upon the lands so applied for and filed upon, and the said defendant S. A. D. Puter, prior to making his said application and entry, hereinbefore mentioned, entered into an agreement with the said defendants C. A. Smith and

Frederick A. Kribs, in and by which the said S. A. D. Puter promised and agreed, upon being permitted to enter said land so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants C. A. Smith or John A. Willd; and in consideration of the foregoing agreements made by such applicants, except the said S. A. D. Puter, the said S. A. D. Puter promised and agreed to pay each of said applicants the sum of \$100.00, and pay all the expenses of filing and making final proof upon, together with the purchase price of the lands applied for by each of said applicants.

And your orator further shows unto your Honors and alleges: That each of said applicants hereinbefore mentioned and described, and upon the dates hereinbefore set forth, filed a written statement, in duplicate, which is hereinbefore designated as "Timber and Stone Sworn Statement," in which said written statements each of said applicants designated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited; contained no mining or other improvements, nor, as such applicant verily believed, any valuable deposit of gold, silver, cinna-bar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his or her own exclusive use and benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever, by which the title which he or

she might acquire from the [10] Government of the United States should inure to the benefit of any person except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon.

IX.

Your orator further shows unto your Honors and alleges: That upon the filing of said statements, as hereinbefore set forth, the Register of said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applications, as required by law, and furnished each of such applicants a copy of such notice for publication, and the said defendant S. A. D. Puter, pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices to be duly and regularly published in a newspaper, as required by law, and after the expiration of such publication the said defendant S. A. D. Puter furnished to the Register of said La Grande Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in a newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence and proof so furnished and offered, and notwithstanding

the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof and having no means of knowing or ascertaining the same, [11] did receive from each of said applicants the sum of \$400.00, as payment for the lands described in said respective applications, under the said Act of Congress of June 3d, 1878, at the rate of \$2.50 per acre, and permitted each of said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant had purchased the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the dates and in the manner following, to wit:

FINAL CERTIFICATE.

Number.	Name.	Date.
8168	S. A. D. Puter,	April 18th, 1900.
8170	John L. Green,	April 18th, 1900.
8171	Thomas Wilson,	April 18th, 1900.
8172	Charles Barr,	April 18th, 1900.
8173	Charles Burley,	April 18th, 1900.
8174	Neal D. Dozier,	April 18th, 1900.
8176	Harry Saltmarsh,	April 18th, 1900.
8177	Harry C. Barr,	April 18th, 1900.
8178	Edward Finley,	April 18th, 1900.
8179	John J. Jaggy,	April 18th, 1900.
8180	J. S. Phillips,	April 18th, 1900.
8181	Zebulin Smith,	April 18th, 1900.
8182	Douglas Adkinson,	April 18th, 1900.
8183	Sadie E. Puter,	April 19th, 1900.
8186	Mrs. Elvira Jacobs,	April 20th, 1900.

Number.	Name.	Date.
8231	Isaac R. Borum,	May 16th, 1900.
8232	Benjamin F. Kirk,	May 16th, 1900.
8233	George L. Thompson,	May 16th, 1900.
8234	Peter Buffington,	May 16th, 1900.
[12]		
8235	John Harrison,	May 16th, 1900.
8236	Mrs. Jennie Moulton,	May 16th, 1900.
8239	Jacob W. Stillwell,	May 16th, 1900.
8240	Luella Beeman,	May 16th, 1900.
8241	Henry B. Blakely,	May 16th, 1900.
8242	Hugh Blakely,	May 16th, 1900.
8243	Elam Miller,	May 16th, 1900.
8244	Frank W. Burford,	May 16th, 1900.
8238	James B. Cooley,	May 16th, 1900.

X.

And your orator further shows unto your Honors, that pursuant to said unlawful conspiracy to defraud the United States out of its said lands, as aforesaid, and pursuant to said unlawful agreements entered into by the said defendant S. A. D. Puter with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said S. A. D. Puter, at the time each of said applicants made proof before the officers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, and paid, advanced, and furnished the purchase money for the lands included in the application of each of said applicants; and thereupon each of said applicants executed and delivered to the defendant John A. Willd a warranty deed purporting

to transfer, convey and set over unto the said defendant John A. Willd the title to the lands included and described in their respective applications and entries; and each of said applicants then and there executed and delivered to the defendant Frederick A. Kribs a pretended mortgage upon the said lands included in their respective entries and applications, purporting to secure the sum of \$600.00, payable [13] ninety days after the date of such mortgage; and in each of said deeds and mortgages the applicants who were married were joined by their respective wives or husbands.

XI.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned was made by the respective applicants and entrymen and entrywomen as agents of and for the use and benefit of the said defendants S. A. D. Puter, C. A. Smith, Frederick A. Kribs, John A. Willd, Robert E. Greacen, Hubert E. Rogers, and Nils O. Werner, or some of them.

XII.

And your orator further shows unto your Honors and alleges, that thereafter the land officers of said United States Land Office at Roseburg, Oregon, transmitted to the General Land Office the papers and testimony relating to each of said applications, and thereafter, notwithstanding the facts hereinbefore set forth, the President of the United States and the officers of the Department of the Interior and the General Land Office of the United States of America, being ignorant thereof and having no means of ascertaining the same, did, on the 12th day of

August, 1902, issue to each of said applicants to purchase and enter timber lands, as hereinbefore set forth, a patent purporting to convey to the respective applicants the land described in their respective applications.

XIII.

And your orator further shows unto your Honors and alleges; that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of [14] the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the President of the United States had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents and just prior to the institution of this, and by the exercise of reasonable diligence could not have discovered these facts any sooner.

XIV.

And your orator further shows unto your Honors that he is informed that the defendant Nils O. Werner claims to have some interest in all said lands patented to the defendants as hereinbefore set forth, but your orator avers that the said Nils O. Werner acquired his alleged title or interest in said lands through successive deeds of release and quitclaim executed therefor by the following named defendants in the order and at the dates herein respectively named, to wit: John A. Willd and wife to Robert F. Greacen, November 2d, 1900; Robert F. Greacen to Hubert E.

Rogers, February 11th, 1901; Hubert E. Rogers and wife to Nils O. Werner, December 21st, 1904. And your orator charges and avers that in each and every instance respectively, and as to each and every party in this paragraph mentioned, he took and received said respective deeds with full notice of the fraud so perpetrated upon your orator, as alleged in this bill of complaint, and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned, and to prevent the United States from recovering said lands, and that each of such purchases and deeds is void in equity and should be so declared in favor of the United States and any purchase or pretended purchase or incumbrance or lien, or pretended incumbrance or apparent lien [15] alleged to be existing at law or in equity thereon upon such lands or any portion thereof should be declared void by the decree of this Honorable Court.

XV.

And your orator further shows unto your Honors that he is informed that the defendant, the First Trust and Savings Bank of Illinois, claims to have some interest in said lands patented to the defendants, as hereinbefore set forth, but your orator avers that whatever interest or claim the said First Trust and Savings Bank of Illinois has, or claims to have, in said lands is subject and inferior to the rights of complainant therein, and that the said First Trust and Savings Bank of Illinois procured and received whatever interest or claim it has in or to said lands with full notice of the fraud so perpetrated upon

the complainant, as alleged in this bill of complaint, and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned, and to prevent the United States from recovering said lands, and that such claim or right of the First Trust and Savings Bank of Illinois is void in equity, and should be so declared in favor of the United States, and any pretended encumbrance or lien alleged to be existing in favor of the said First Trust and Savings Bank of Illinois should be declared void by the decree of this Honorable Court.

XVI.

And your orator further avers that the false and fraudulent representations made by the defendants, as hereinbefore set forth, were all made with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described, and that your complainant relied upon said false and fraudulent representations so made as aforesaid, and by reason of such false and fraudulent [16] representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught.

For as much, therefore, as your orator is without adequate remedy in the premises, except in a court of equity, where such matters are properly relievable, and to the end therefore that your orator may have that relief which may only be obtained in a court of equity, and in this court having jurisdiction thereof

under the aforesaid facts, as alleged, and that the defendants and each of them may answer the premises and show if he or she can why your complainant should not have the relief herein prayed for, your orator prays and requests of your Honors to grant unto your complainant a writ of subpoena to be directed to said defendants, and each of them, hereinbefore named in the title to this bill, commanding him or her, at a day certain, and under a certain penalty therein to be limited, to personally appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath or affirmation, the benefit whereof is hereby expressly waived and to stand, perform and abide by such order and decree as may be made against them in the premises, as to your Honors shall seem meet and agreeable to equity, and that your complainant may have such further and other relief in the premises as the nature of the circumstances may require, and particularly that your orator may have a decree cancelling and annulling and setting aside each and all of said patents for the lands hereinbefore mentioned and described, and cancelling, annulling and setting aside all liens and encumbrances and pretended liens and encumbrances upon said lands, and divesting the defendants, and each of them, of and from all right, title, estate in law [17] or equity and of all claim or interest of whatsoever kind or nature that they or any of them may assert thereto, and in and about the premises may make such further orders or decree as may be meet and agreeable to equity and that your

complainant may have its costs in this suit.

CHARLES J. BONAPARTE,
Attorney General of the United States.

JOHN McCOURT,
United States Attorney for the District of Oregon.
United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn on oath, depose and say, that I am United States Attorney for the District of Oregon, and that the facts set forth in the foregoing bill of complaint are true as I verily believe.

JOHN McCOURT.

Subscribed and sworn to before me this 25 day of May, 1908.

[Seal]

WALTER H. EVANS,
Notary Public for Oregon.

Bill of Complaint. Filed May 25, 1908. G. H. Marsh, Clerk. [18]

[Marshal's Return to Subpoena ad Respondendum.]

District of Oregon,—ss.

I hereby certify and return, that on the 25th day of May, 1908, I received the within Writ and that after diligent search, and inquiry from F. A. Kribs & S. A. D. Puter, I am unable to find the within-named defendants Nils O. Werner, Eva C. Werner, The First Trust & Savings Bank of Illinois, Robt. E. Gracen, Hubert E. Rogers, John A. Willd, C. A. Smith, Chas. Burley, Harry C. Barr, John J. Jaggy, Zebulin Smith, Douglas Adkinson, (dead), Sadie E. Puter, Elvira S. Jacobs, Isaac R. Borum, Jennie Moulton,

Elam Miller, Frank W. Burford, Luella Beeman,
Hugh Blakely, Geo. I. Thomas, within my district.

CHARLES J. REED,
United States Marshal.

By _____ [20]

(Title of Court and Cause.)

Subpoena ad Respondendum.

The President of the United States of America, to
Nils O. Werner and Eva C. Werner, His Wife,
The First Trust and Savings Bank of Illinois,
Robert E. Greacen, Hubert E. Rogers, John A.
Willd, C. A. Smith, Frederick A. Kribs, Stephen
A. D. Puter, John L. Green, Thomas Wilson,
Charles Barr, Charles Burley, Neal D. Dozier,
Harry Saltmarsh, Harry C. Barr, Edward Fin-
ley, John J. Jaggy, J. S. Phillips, Zebulin Smith,
Douglas Adkinson, Sadie E. Puter, Elvira S.
Jacobs, Isaac R. Borum, Benjamin F. Kirk,
George I. Thomas, Peter Buffington, John Har-
rison, Jennie Moulton, Jacob W. Stillwell,
Henry Blakely, Elam Miller, Frank W. Bur-
ford, James B. Cooley, Luella Beeman, and
Hugh Blakely, Greeting:

You, and each of you, are hereby commanded that
you be and appear in said Circuit Court of the United
States, at the courtroom thereof, in the city of Port-
land, in said District, on the first Monday of July
next, which will be the 6th day of July, A. D. 1908,
to answer the exigency of a Bill of Complaint ex-
hibited and filed against you in our said court,
wherein The United States of America is complain-
ant, and you are defendants, and further to do and
receive what our said Circuit Court shall consider in

this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or your deputy, to make due service of this our writ of subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 25th day of May, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

[Seal]

(Signed) G. H. MARSH,
Clerk.

By _____,
Deputy Clerk.

MEMORANDUM PURSUANT TO EQUITY
RULE NO. 12 OF THE SUPREME COURT
OF THE UNITED STATES.

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso*. [21]

[Endorsed]: Doc. 396, p. 46. No. 3320. In the Circuit Court of the United States for the District of Oregon. In Equity. The United States vs. Nils O. Werner et al. Subpoena ad Respondendum. Returned and filed July 20, 1908. (Signed) G. H. Marsh, Clerk. By _____, Deputy Clerk.

And afterwards, to wit, on the 27th day of July, 1908, there was duly filed in said court a motion for order directing certain defendants to appear and plead, in words and figures as follows, to wit:

[24]

[Motion for Order Directing Nils O. Werner et al. to Appear, etc.]

(Title of Court and Cause.)

Comes now the United States of America, the above-named complainant, by John McCourt, its attorney in and for the District of Oregon, and, based on the bill of complaint and affidavit filed herein, moves this Honorable Court to make and cause to be entered of record in this court an order directing Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank W. Burford, defendants, to appear, plead, answer or demur to complainant's bill of complaint filed herein by a day certain to be designated in such order.

JOHN McCOURT,

United States District Attorney.

Filed July 27, 1908. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [25]

And afterwards, to wit, on the 27th day of July, 1908, there was duly filed in said court an affidavit in support of motion for order for certain defendants to appear and plead, in words and figures as follows, to wit: [26]

[**Affidavit in Support of Motion for Order Directing
Nils O. Werner et al. to Appear, etc.**]

(Title of Court and Cause.)

United States of America,

District and State of Oregon,—ss.

I, John McCourt, being first duly sworn, depose and say: That I am United States Attorney for the District of Oregon, and that, on the 25th day of May, 1908, a bill of complaint was filed in the above-entitled court, in the above-entitled suit, wherein complainant seeks to cancel, annul and set aside the patents to certain lands situate in the State and District of Oregon, and described in the above-mentioned bill of complaint, which said patents had heretofore been issued by complainant to the defendants Stephen A. D. Puter, John L. Green, Thomas Wilson, Charles Barr, Charles Burley, Neal D. Dozier, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, J. S. Phillips, Zebulin Smith, Douglas Adkinson, Sadie E. Puter, Elvira S. Jacobs, Isaac R. Borum, Benjamin F. Kirk, George L. [27] Thompson, Peter Buffington, John Harrison, Jennie Moulton, Jacob W. Stillwell, Henry Blakely, Elam Miller, Frank W. Burford, James B. Cooley, Luella Beeman and Hugh Blakely, respectively, and in and by said bill of complaint complainant further seeks to cancel, annul and set aside all claims, rights, liens and conveyances of every nature asserted, held or made by the defendants, or any of them, in respect to or touching said lands described and set forth in said bill of complaint; that said patents to said lands, so issued to the defendants, as aforesaid, were

obtained from complainant by said defendants through fraud and false and fraudulent representations, as more particularly appears in the said bill of complaint on file herein, and to which reference is hereby made, and by such reference said bill of complaint is hereby made a part of this affidavit.

That said suit is one to enforce an equitable claim to the title to the said lands and real property described in said bill of complaint, and that the defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, C. A. Smith, Sadie E. Puter, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank W. Burford, are not inhabitants or residents of the State or District of Oregon, and that none of them can be found in said State or District, and that none of said defendants has voluntarily appeared in said suit.

That on the 25th day of May, 1908, there was issued out of the above-entitled court a subpoena ad respondendum, directed against all of the defendants named in the above-entitled suit, including the defendants last above named, which said subpoena was, on the 25th day of May, 1908, delivered to and placed in the hands of the United States Marshal for the District of Oregon *pro* service upon all of said defendants [28] named in the above-entitled suit, including said defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas

Adkinson, Jennie Moulton, and Frank W. Burford, and that on the 20th day of July, 1908, the said United States Marshall for the District of Oregon duly and regularly made return upon said *subpoena ad respondendum*, filed the same in the above-entitled court and duly and regularly certified thereon that he had made diligent search and inquiry for said defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank W. Burford, and each of them, and had made inquiry of persons likely to know the whereabouts of said last-named defendants, and that he was unable to find said defendants, or either or any of them, within the District or State of Oregon; that affiant is informed and believes that the above-named defendants, C. A. Smith, John A. Willd, Nils O. Werner and Eva C. Werner, his wife, are now residents of and residing in Minneapolis, Hennepin County, Minnesota, and the said First Trust and Savings Bank of Illinois is a resident of the State of Illinois, but the particular place of residence in said State of the said First Trust and Savings Bank of Illinois is unknown to affiant; that the said defendants Hubert E. Rogers and Robert F. Greacen are now residents and are residing either in said Minneapolis, Hennepin County, State of Minnesota, or in New York County, State of New York; and that the said Sadie E. Puter is a resident of and residing in Berkeley, California; that Elvira S. Jacobs is a resident of and residing in Alameda, California; [29]

that the said Elam Miller is a resident of and residing in North Yakima, Washington; that the said Charles Burley is a resident of and is now residing in Salt Lake City, Utah; that the said Douglas Adkinson is a resident of and is now residing in Cottonwood, Idaho; that said Jennie Moulton is a resident of and is now residing in Seattle, Washington, and that the said Frank W. Burford is a resident of and is now residing in Tacoma, Washington.

That this affidavit and the motion herewith filed are made and filed for the purpose of obtaining an order of this Honorable Court directing that said defendants appear, plead, answer or demur herein by a day certain to be designated by this Honorable Court, and directing that said order be served upon said defendants, and each of them, as required by law and the rules of this court.

That affiant is informed and believes that no person is in charge of or in possession of said real property described in complainant's bill of complaint herein.

JOHN McCOURT.

Subscribed and sworn to before me this 27th day of July, 1908.

G. H. MARSH,

Clerk of the United States Court.

Filed July 27th, 1908. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. [30]

And afterwards, to wit, on Monday, the 27th day of July, 1908, the same being the 91st judicial day of the regular April, 1908, term of said court—Present, the Honorable CHARLES E. WOL-

VERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [31]

[Marshal's Returns Re Service of Complaint, etc.]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Bill of Complaint, referred to in Case #3320 on the therein-named Charles A. Smith, by handing to and leaving a true and correct copy thereof with Charles A. Smith, personally, at Minneapolis in said District on the Eleventh day of August, A. D. 1908.

(Signed) WILLIAM H. GRIMSHAW,
U. S. Marshal. [32]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Order for nonresident defendants to appear and plead on the therein-named Charles A. Smith and Nils O. Werner, by handing to and leaving a true and correct copy thereof with Charles A. Smith and Nils O. Werner, each personally, at Minneapolis in said District, on the Eleventh day of August, A. D. 1908.

(Signed) WILLIAM H. GRIMSHAW,
U. S. Marshal. [33]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Order of Court on the therein-named Eva C. Werner, by handing to and leaving a true and correct copy thereof with Eva C. Werner, personally, at Minneapolis in said District on the Eleventh day of August, A. D. 1908.

(Signed) WILLIAM H. GRIMSHAW,
U. S. Marshal.
By Leone Rich,
Deputy. [34]

[Order Directing Nils O. Werner et al. to
Appear, etc.]

(Title of Court and Cause.)

Now at this time comes on regularly to be heard the application of John McCourt, United States Attorney for the District of Oregon, appearing on behalf of complainant herein, for an order directing absent defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank Burford, defendants, to appear and plead, answer or demur herein, by a day certain to be designated by the Court. [35]

And it appearing to the Court that this suit is commenced by the United States of America, complain-

ant, to enforce an equitable claim to real property situated in the State and District of Oregon, the said suit being one to cancel and annul the patents to certain lands, which had heretofore been issued by complainant to defendants Stephen A. D. Puter, John L. Green, Thomas Wilson, Charles Barr, Charles Burley, Neal D. Dozier, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, J. S. Phillips, Zebulin Smith, Douglas Adkinson, Sadie E. Puter, Elvira S. Jacobs, Isaac R. Borum, Benjamin F. Kirk, George L. Thompson, Peter Buffington, John Harrison, Jennie Moulton, Jacob W. Stillwell, Henry Blakely, Elam Miller, Frank W. Burford, James E. Cooley, Luella Beeman, and Hugh Blakely, and that said Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank Burford, defendants herein named, are not inhabitants of the District of Oregon, nor can they, or either of them, be found in the State or District of Oregon, nor has either of them voluntarily appeared in and to said suit.

And the Court being of the opinion that said application should be granted;

IT IS HEREBY ORDERED that each of said defendants, Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson,

Jennie Moulton and Frank Burford shall appear, plead, answer or demur to the bill of complaint herein within sixty days respectively from the date upon which this said order may be served upon the defendants so required to appear, plead, answer or demur, at the term of this court which may then be in session at the courtroom thereof, in the city of Portland, County of Multnomah and State of Oregon. [36]

That certified copies of this order, prepared by the clerk of the court, under the seal of the Court, be served on the said Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank Burford, defendants; by a United States Marshal for any District in the United States where said defendants may be found, and that there be served upon said defendant, C. A. Smith, with said certified copy of this order, a copy of plaintiff's bill, certified as provided by the Rules of this Court.

Done in open court in the City of Portland, State of Oregon, on the 28th day of July, 1908.

CHAS. E. WOLVERTON,
Judge.

Filed July 27, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [37]

And afterwards, to wit, on the 5th day of September, 1908, there was duly filed in said court a joint and several plea of Frederick A. Kribs et

al., to Bill of Complaint, in words and figures as follows, to wit: [38]

[Joint and Several Plea of Frederick A. Kribs et al. to Complaint.]

(Title of Court and Cause.)

The joint and several plea of Frederick A. Kribs, Thomas Wilson, Charles Barr, Neal D. Dozier, Harry Saltmarsh, Edward Finley, J. S. Phillips, Zebulin Smith, Benjamin E. Kirk, George L. Thompson (in the bill called George I. Thomas), Peter Buffington, John Harrison, Jacob W. Stillwell, Harry B. Blakely and James B. Cooley, defendants, to the bill of complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters and things in said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea nevertheless to said bill aver and say that on or about the 31st day of May, A. D. 1906, a corporation was duly organized and created under the [39] general laws of the State of Minnesota by the name of Linn and Lane Timber Company, which said corporation by virtue of its charter and the general laws of said State of Minnesota has at all times had, and it now has, power and authority to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, and which said corporation has at all times had, and now has, its principal place of business at the City of Minneapolis in said State of Minnesota, and it has at all times had, and it now has, officers and directors who reside at said City of Minneapolis. That on or

about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a power of attorney wherein and whereby one Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit or proceeding against said corporation in any of the courts of said State of Oregon, or in any court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by serving the same upon said Kribs as said attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, and entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations, etc.," and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands [40] and tenements in said State, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose and with the power and authority aforesaid; and ever since said date the said Frederick A. Kribs has resided, and he now resides, at the City of Portland, in said State, and his place of business has ever since said date been, and

it now is, Number 330 Chamber of Commerce Building, in said City of Portland.

These defendants further aver and say that on and prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, Charles A. Smith and Nels O. Werner became and were seized and possessed of the right, title, interest and estate which complainant granted in and to all the lands described in said bill of complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said lands, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Nels O. Werner, by a deed dated the 15th day of August, A. D. 1907, and duly executed by himself and Eva C. Werner, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Nels O. Werner were then so respectively seized and possessed; that both said deeds were executed and delivered to said company a long time before the said bill of complaint was filed, to wit, before the 16th day of August, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, [41] by virtue of said deeds, the owner of all the right, title, interest and

estate which complainant granted to the several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 15th day of August, 1907, said company has claimed, and it now claims, to be seized of an estate in fee simple, absolute, in and to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said lands so acquired, held and claimed by said company, it, the said Linn and Lane Timber Company, is an indispensable party defendant herein, and for as much as the complainant has not made said company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill, and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

L. H. TARPLEY,
W. W. BANKS,
PERCY R. KELLY,
ALBERT H. TANNER,

Of Counsel for Said Defendants.

I certify that in my opinion the foregoing plea is well founded in point of law.

L. H. TARPLEY,
Of Counsel for Said Defendants. [42]

State of Oregon,
County of Multnomah,—ss.

Frederick A. Kribs, one of the defendants in the above-entitled cause, being duly sworn, says, that the foregoing plea is true in point of fact, and is not interposed for delay.

FREDERICK A. KRIBS.

Subscribed and sworn to before me this 5th day of September, A. D. 1908.

[Seal]

L. H. TARPLEY,
Notary Public for Oregon.

Plea of Frederick A. Kribs et al. Filed Sept. 5, 1908. G. H. Marsh, Clerk. [43]

And afterwards, to wit, on Monday, the 5th day of October, 1908, the same being the 1st judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [44]

[Order Granting Fifteen Days Within Which to Serve and File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, on this 5th day of October, 1908, the above-entitled cause coming on to be heard upon the motion of John McCourt, United States Attorney for the District of Oregon, for fifteen days from this date within which to file an amended bill, or supplemental bill herein, as he may determine proper;

And it appearing to the Court that the defendants Frederick A. Kribs, Thomas Wilson, Charles Barr, Neal D. Dozier, Harry Saltmarsh, Edward Finley, J. S. Phillips, Zebulin Smith, Benjamin F. Kirk, George L. Thompson (in the bill called George I. Thomas), Peter Buffington, John Harrison, Jacob W. Stillwell, Harry B. Blakely, and James B. Cooley, defendants, heretofore interposed a plea herein alleging that the Linn & Lane Timber Company, a corporation, claims [45] some right, title or interest in and to the subject matter of this suit and is an indispensable party herein, and the said John McCourt representing that complainant desires to amend his said bill or file a supplemental bill herein bringing in said Linn & Lane Timber Company as a party defendant but without admitting any of the allegations of said plea of said defendants herein to be true, except that conveyances have been placed of record in Linn County, Oregon, since the commencement of this suit purporting to convey the said lands in controversy herein to the said Linn & Lane Timber Company;

And it further appearing to the Court that the application of said complainants shall be allowed in order that whatever rights the said Linn & Lane Timber Company has in said lands, if any, may be litigated in this suit.

Therefore, **IT IS ORDERED** that complainant have fifteen days from this date within which to serve and file an amended or supplemental bill herein as may be determined upon by it.

CHARLES E. WOLVERTON,

Judge.

Order. Filed October 5, 1908. G. H. Marsh,
Clerk. By J. W. Marsh, Deputy. [46]

And afterwards, to wit, on the 8th day of October,
1908, there was duly filed in said court a plea of
Nils O. Werner and C. A. Smith to the Bill of
Complaint, in words and figures as follows, to
wit: [47]

**[Joint and Several Plea of Nils O. Werner and
Charles A. Smith to Bill.]**

(Title of Court and Cause.)

The joint and several plea of Nils O. Werner and
Charles A. Smith (in the bill called C. A. Smith) to
the bill of complaint of the complainant.

These defendants, by protestation, not confessing
or acknowledging all or any part of the matters and
things in said bill of complaint contained to be true.
in manner and form as the same are therein set forth,
for plea nevertheless to said bill aver and say that
on or about the 31st day of May, A. D. 1906, a cor-
poration was duly organized and created under the
general laws of the State of Minnesota by the name
of Linn and Lane Timber Company, which said cor-
poration by virtue of its charter and the general
laws of said State of Minnesota has at all times had,
and it now has, power and authority to buy, hold and
sell timber and [48] other lands and tenements in
the United States of America, and to conduct for-
estry, mining and agricultural operations on the
same; and which said corporation has at all times
had, and now has, its principal place of business at
the City of Minneapolis in said State of Minnesota,

and it has at all times had, and it now has, officers and directors who reside at said City of Minneapolis. That on or about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a power of attorney wherein and whereby one Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit or proceeding against said corporation in any of the Courts of said State of Oregon, or in any Court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by serving the same upon said Kribs as said attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, and entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations," etc., and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands and tenements in said State, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose and with the power and authority aforesaid; and ever since said date the said

Frederick A. Kribs has resided, and he now resides, at the City of Portland, in said State, and his place of business has ever since said date been, and it now is, Number 330 Chamber [49] of Commerce Building, in said City of Portland.

These defendants further aver and say that on and prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, Charles A. Smith and Nils O. Werner became and were seized and possessed of the right, title, interest and estate which complainant granted in and to all the lands described in said bill of complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said lands, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Nils O. Werner, by a deed dated the 15th day of August, A. D. 1907, and duly executed by himself and Eva C. Werner, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Nils O. Werner were then so respectively seized and possessed; that both said deeds were executed and delivered to said Company a long time before the said

bill of complaint was filed, to wit, before the 16th day of August, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, by virtue of said deeds, the owner of all the right, title, interest and estate which complainant granted to the several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 15th day of August, 1907, said Company has claimed, and it now claims, to be seized of an estate in fee simple, absolute, in and [50] to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said lands so acquired, held and claimed by said company, it, the said Linn and Lane Timber Company, is an indispensable party defendant herein, and for as much as the complainant has not made said Company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill, and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
DOLPH, MALLORY, SIMON & GEARIN,
Of Counsel for Said Defendants.

further time in which to file an amended Bill of Complaint or Supplemental Bill herein. [56]

And afterwards, to wit, on Thursday, the 5th day of November, 1908, the same being the 28th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [57]

[Order Allowing Five Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith, et al., by Mr. John M. Gearin, of counsel: Whereupon, on motion of said plaintiff, It is Ordered that said plaintiff be, and it is hereby, allowed five days' further time in which to file an amended or supplemental Bill of Complaint herein. [58]

And afterwards, to wit, on the 16th day of November, 1908, there was duly filed in said Court an Amended Bill of Complaint, in words and figures as follows, to wit: [59]

*In the Circuit Court of the United States for the
District of Oregon.*

No. 3320.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NILS O. WERNER, and EVA C. WERNER, His
Wife, THE FIRST TRUST AND SAV-
INGS BANK, OF ILLINOIS, LINN &
LANE TIMBER COMPANY, ROBERT F.
GRAECEN, HUBERT F. ROGERS, C.
A. SMITH, FREDERICK A. KRIBS,
STEPHEN A. D. PUTER, JOHN L.
GREEN, THOMAS WILSON, CHARLES
BARR, CHARLES BURLEY, NEAL D.
DOZIER, HARRY SALTMARSH, ED-
WARD FINLEY, J. S. PHILLIPS, ZEB-
ULIN SMITH, DOUGLAS ADKINSON,
SADIE E. PUTER, ELVIRA S. JACOBS,
ISAAC R. BORUM, BENJAMIN F. KIRK,
GEORGE I. THOMAS, PETER BUFFING-
TON, JOHN HARRISON, JENNIE MOUL-
TON, JACOB W. STILLWELL, HENRY
BLAKELY, ELAM MILLER, FRANK W.
BURFORD, JAMES B. COOLEY, LUELLE
BEEMAN and HUGH BLAKELY,
Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the
United States of America, for the District of
Oregon, in Chancery Sitting:

Your orator, the United States of America, by and
under the authority and direction of the Attorney

General of the United States, and by leave of Court first had and obtained, brings this its amended bill in equity against the above-named defendants, and each of them, and thereupon your orator complains of said defendants respectively, and shows unto your Honors:

I.

That the First Trust and Savings Bank of Illinois was at all the dates and times hereinafter mentioned, and is now, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois. [60]

[II.]

That the defendants Nils O. Werner and Eva C. Werner are, and were at all the times hereinafter mentioned, husband and wife.

III.

That the complainant was until the dates and times herein mentioned, the owner of the following described lands and premises, situate in the County of Linn, State and District of Oregon, and had the full legal title thereto at all said dates and times prior to the 12th day of August, 1902, which said lands were until the times herein mentioned, part of the public domain of the United States of America, and are particularly bounded and described as follows, to wit:

“The South half of Section 24, Township 14 South, Range 2 East of the Willamette Meridian; all of Section 14; north half of Section 20; northwest quarter of southeast quarter of Section 22; west half of Section 24; northwest quarter of Section 28; northeast quarter of Section 31; and all of Sections 34 and 35; in township 14 south, range 3 east of the Willamette Meridian; the northwest quarter of the southeast

quarter of Section 18; the northeast quarter of the northeast quarter of Section 25, the southwest quarter of the southeast quarter of Section 28; west half of the west half of Section 29, all of Sections 30 and 31; and the west half of Section 32; all in Township 14 South, Range 4 east of the Willamette Meridian, situate in the Roseburg Land District of the State of Oregon.”

IV.

That from and after the 12th day of August, 1902, the complainant still continued to be, and is now, the owner of the equitable title to all of said above described lands.

V.

Your orator further shows unto your Honors that some time prior to the month of June, 1900, and for many years prior thereto, the above described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to United States.

VI.

Your orator further shows unto your Honors that [61] some time prior to the month of February, 1900, the above-named defendants, S. A. D. Puter, C. A. Smith, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers, Frederick A. Kribs, and John A. Willd, since deceased, together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above described lands, and in and by said conspiracy and agreement it was understood and agreed that the said S. A. D. Puter should solicit and procure persons to make applications and entries, together with and in addition to

himself, upon the lands above described, under the Act of Congress of June 3, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said S. A. D. Puter should, prior to procuring and obtaining such persons to file upon said lands, as aforesaid, enter into an agreement with each of said persons so to be procured and obtained to file upon said lands, as aforesaid, in and by which said agreement each of said persons so filing on said land promised and agreed that the title which he or she might acquire from the Government of the United States should inure to the benefit of the said defendant C. A. Smith, or some other of the defendants above named in this paragraph, and that as soon as such applicant should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendant C. A. Smith or John A. Willd, since deceased, a warranty deed, conveying said lands to the said C. A. Smith or the said John A. Willd, since deceased, and would execute and deliver to the defendants [62] Frederick A. Kribs or S. A. D. Puter the note of the applicant for \$600.00, due ninety days after date and secured by mortgage upon the lands so filed upon by such applicant, and the said defendant, S. A. D. Puter, should promise each of said applicants, upon behalf of himself and said defendants C. A. Smith, Frederick A. Kribs, Nils

O. Werner, Robert F. Greacen and Hubert F. Rogers, and said John A. Willd, since deceased, to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendant, S. A. D. Puter at the time proof and cash entries should be made.

VII.

That thereafter, on and between the 19th day of January, 1900, and the 26th day of February, 1900, pursuant to said unlawful conspiracy and agreement, hereinbefore set forth, the defendant, S. A. D. Puter solicited and procured the defendants hereinafter named together with Harry C. Barr and John J. Jaggy, each since deceased, to make applications to purchase and enter the lands hereinafter described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and the said S. A. D. Puter also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter said lands filed a statement in duplicate, verified by the oath of such applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and in the manner hereinafter [63] set forth:

Timber and Stone Sworn Statement No. 770, by S. A. D. Puter, for the Northwest $\frac{1}{4}$ of Section 20,

Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 797, by John L. Green, for the Northwest $\frac{1}{4}$ of Section 35, Township 14, South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 800, by Charles Barr, for the Southwest $\frac{1}{4}$ of Section 35, Township 14 South, Range 3 East, of the Willamette Meridian, filed January 21st, 1900.

Timber and Stone Sworn Statement No. 799, by Charles Burley, for the Southeast $\frac{1}{4}$ of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 799, by Neal D. Dozier, for the Southwest $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 816, by Harry Saltmarsh, for the Northwest $\frac{1}{4}$ of Section 24, Township 14 South, Range 3 East of the Willamette Meridian, filed February 1st, 1900.

Timber and Stone Sworn Statement No. 769, by H. C. Barr, for the Southeast $\frac{1}{4}$ of Section 24, Township 14 South, Range 2 East of the Willamette Meridian, filed January 18th, 1900.

Timber and Stone Sworn Statement No. 777, by John J. Jaggy, for the Southeast $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 801, by Edward Finley, for the Northeast $\frac{1}{4}$ of Section 35, Township 14 South, Range 3 East of the Willamette

Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 798, by J. S. Phillips, for the Northeast $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 780, by Zebulin Smith, for the Northeast $\frac{1}{4}$ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 814, by Douglas Adkinson, for the Southwest $\frac{1}{4}$ of Section 24, Township 14 South, Range 3 East of the Willamette Meridian, filed February 1st, 1900. [64]

Timber and Stone Sworn Statement No. 763, by Sadie E. Puter, for the Northeast $\frac{1}{4}$ of Section 20, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 764, by Mrs. Elvira Jacobs for the Northwest $\frac{1}{4}$ of Section 22, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 870, by I. R. Borum for the Southwest $\frac{1}{4}$ of Section 14, Township 14, South, Range 3 East of the Willamette Meridian, filed Feb. 26, 1900.

Timber and Stone Sworn Statement No. 871, by Benjamin F. Kirk for the Northeast $\frac{1}{4}$ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 869, by George L. Thompson for the Northwest $\frac{1}{4}$ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 879, by Peter Buffington for the Southeast $\frac{1}{4}$ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 876, by John Harrison for Lot 1 and the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 30, and the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 872, by Thomas Wilson, for the Northwest $\frac{1}{4}$ of Section 23, Township 14 South, Range 3 East of the Willamette Meridian, filed January 22nd, 1900.

Timber and Stone Sworn Statement No. 867, by Mrs. Jennie Moulton, for the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement, No. 880, by Jacob W. Stillwell, for Lot 1, and the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 31; the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 878, by Henry B. Blakely, for Lot 3 and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 30, and the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 882, by Elam Miller for the Northeast $\frac{1}{4}$ of Section 31,

Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 875, by Frank W. Burford, for Lot 2 and the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 31, and the Southwest $\frac{1}{4}$ of the Northwest [65] $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 874, by James B. Cooley for Lot 3 and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 31, and the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 868, by Mrs. Luella Beeman, for Lot 4 and the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 31, and the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 873, by Hugh Blakely, for Lot 4 and the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 30, and the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

VIII.

Your orator further shows unto your Honors and alleges, that, pursuant to said unlawful conspiracy and agreement, each of said applicants to purchase and enter timber lands, mentioned and described in the last preceding paragraph of this bill, with the exception of the defendant S. A. D. Puter, prior to

making or filing his or her application to purchase and enter said lands, made and entered into a contract and agreement with the said S. A. D. Puter, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants, C. A. Smith, Frederick A. Kribs, Nils O. Werner, Robert F. Greacen, Hubert E. Rogers, and John A. Willd since deceased, or some of them, whom the said S. A. D. Puter was then and there representing and acting for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer, convey and set over said lands, by warranty deed, to the said C. A. Smith or John A. Willd, since deceased, and to execute and deliver to the said defendants S. A. D. Puter or Frederick A. Kribs the promissory [66] note of such applicant, payable ninety days after date, and secured by a mortgage upon the lands so applied for and filed upon, and the said defendant S. A. D. Puter, prior to making his said application and entry, hereinbefore mentioned, entered into an agreement with said defendants, C. A. Smith and Frederick A. Kribs, in and by which the said S. A. D. Puter promised and agreed, upon being permitted to enter said land so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants C. A. Smith or John A. Willd, since deceased; and, in consideration of the foregoing agreements made by such applicants, except the said S. A. D. Puter, the said S. A. D. Puter promised and agreed to pay each of said applicants the sum of \$100.00, and pay all the

expenses of filing and making final proof upon, together with the purchase price of the lands applied for by each of said applicants.

And your orator further shows unto your Honors and alleges, that each of said applicants hereinbefore mentioned and described, and upon the dates hereinbefore set forth, filed a written statement, in duplicate, which is hereinbefore designated as "Timber and Stone Sworn Statement," in which said written statements each of said applicants designated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited; contained no mining or other improvements, nor as such applicant verily believed, any valuable deposit of gold, silver, cinnabar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his or her own exclusive use and [67] benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon.

IX.

Your orator further shows unto your Honors and

alleges, that upon the filing of said statements, as hereinbefore set forth, the Register of said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applications, as required by law, and furnished each of such applicants a copy of such notice for publication, and the said defendant S. A. D. Puter, pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices to be duly and regularly published in a newspaper, as required by law, and after the expiration of such publication the said defendant S. A. D. Puter furnished to the Register of said Roseburg Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in a newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence [68] and proof as furnished and offered, and notwithstanding the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof and having no means of knowing or ascertaining the same, did receive from each of said applicants the sum of \$400.00, as payment for the lands described in said respective applications, under the said Act of Congress of June 3d, 1878, at the rate of \$2.50 per acre, and permitted each of

said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant, had purchased the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the dates and in the manner following, to wit:

FINAL CERTIFICATES.

Number.	Name.	Date.
8168	S. A. D. Puter,	April 18, 1900.
8170	John L. Green,	April 18, 1900.
8171	Thomas Wilson,	April 18, 1900.
8172	Charles Barr,	April 18, 1900.
8173	Charles Burley,	April 18, 1900.
8174	Neal D. Dozier,	April 18, 1900.
8176	Harry Saltmarsh,	April 18, 1900.
8177	Harry C. Barr,	April 18, 1900.
8178	Edward Finley,	April 18, 1900.
[69]		
8179	John J. Jaggy,	April 18, 1900.
8180	J. S. Phillips,	April 18, 1900.
8181	Zebulin Smith,	April 18, 1900.
8182	Douglas Adkinson,	April 18, 1900.
8183	Sadie E. Puter,	April 19, 1900.
8186	Mrs. Elvira Jacobs,	April 20, 1900.
8231	Isaac R. Borum,	May 16, 1900.
8232	Benjamin F. Kirk,	May 16, 1900.
8233	George L. Thompson,	May 16, 1900.
8234	Peter Buffington,	May 16, 1900.
8235	John Harrison,	May 16, 1900.
8236	Mrs. Jennie Moulton,	May 16, 1900.
8239	Jacob W. Stillwell,	May 16, 1900.

Number.	Name.	Date.
8240	Luella Beeman,	May 16, 1900.
8241	Henry B. Blakely,	May 16, 1900.
8242	Hugh Blakely,	May 16, 1900.
8243	Elam Miller,	May 16, 1900.
8244	Frank W. Burford,	May 16, 1900.
8238	James B. Cooley,	May 16, 1900.

X.

And your orator further shows unto your honors, that pursuant to said unlawful conspiracy to defraud the United States out of its said lands, as aforesaid, and pursuant to said unlawful agreements entered into by the said defendant S. A. D. Puter, with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said S. A. D. Puter at the time each of said applicants made proof before the officers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, [70] and paid, advanced and furnished the purchase money for the lands included in the application of each of said applicants; and thereupon each of said applicants executed and delivered to the said John A. Willd, since deceased, a warranty deed purporting to transfer, convey and set over unto the said John A. Willd, since deceased, the title to the lands included and described in their respective applications and entries; and each of said applicants then and there executed and delivered to the defendant, Frederick A. Kribs a pretended mortgage upon the said lands, included in their respective entries and applications, purporting to secure the sum of

\$600.00, payable ninety days after the date of such mortgage; and in each of said deeds and mortgages the applicants who were married were joined by their respective wives or husbands.

XI.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned was made by the respective applicants and entrymen and entrywomen as agents of and for the use and benefit of the said defendants S. A. D. Puter, C. A. Smith, Frederick A. Kribs, Robert F. Greacen, Hubert E. Rogers, Nils O. Werner, and John A. Willd, since deceased, or some of them. And also that each and every of the statements and representations made by the respective applicants and entrymen and entrywomen aforesaid, in each of their respective applications, and in each of their respective final proofs, hereinbefore mentioned and referred to, was and were false, fraudulent and untrue, by reason and because of the facts hereinbefore set forth and alleged; and by reason and because of the facts that each legal subdivision of the particular tract of land which he or she desired to purchase, and described in his or her [71] application, and in his or her final proof, was not unfit for cultivation, and was not valuable chiefly for timber, and such applicant did not verily believe that the same contained no valuable deposits of gold, silver, cinnabar, copper or coal, and in truth and in fact such applicant had made other application under such Act, and he or she did apply to purchase the lands above described on speculation and not in good faith and not to appropriate it to his or her own ex-

clusive use and benefit, and he or she had directly or indirectly made an agreement in some way and manner with some person or persons, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of some person except himself or herself, and in truth and in fact the oath of each of the respective applicants to their respective applications, and to their respective final proofs was wilfully and corruptly false and perjured, as the said applicant and the other defendants in this case then and there well knew, to wit, at the time of the making of said false representations and statements in said applications and in said final proofs, and at the time of making their respective oaths.

XII.

And your orator further avers that the said false and fraudulent representations aforesaid were each and all of them made by the defendants herein with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described. And that your complainant and its officers empowered to act in the premises being ignorant of the falsity thereof, and having no means of ascertaining the same, relied thereon and were induced thereby to and did, on the 12th day of August, [72] 1902, issue to each of said applicants to purchase and enter timber lands, as hereinbefore set forth, a patent purporting to convey the lands described in said application and proof to the applicant who applied therefor as aforesaid.

XIII.

And your orator further shows unto your Honors

and alleges, that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the President of the United States had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents and just prior to the institution of this suit, and by the exercise of reasonable diligence could not have discovered these facts any sooner.

XIV.

And your orator further shows unto your Honors that thereafter for the purpose of preventing complainant from recovering said lands, deeds of release and quitclaim purporting to convey the same, were fraudulently and corruptly executed by and among the defendants in the order and at the dates herein respectively named, to wit: John A. Willd, and wife to Robert F. Greacen, November 2, 1900; Robert F. Greacen to Hubert E. Rogers, February 11, 1901; Hubert E. Rogers and wife to Nils O. Werner, December 21, 1904. And your orator charges and avers that all of the fraudulent transactions hereinbefore set forth and alleged in this bill of complaint, were corruptly made and performed with [73] the intent and for the purpose that the title to the lands hereinbefore described should inure to the benefit of the defendant C. A. Smith, and that in each and every instance, respectively, and as to each and every

party in this paragraph mentioned, he took and received said respective deeds with full knowledge and notice of the fraud so perpetrated upon your orator as alleged in this bill of complaint and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned and for the use and benefit of the defendant, C. A. Smith, and to enable the said defendant, C. A. Smith, to prevent the United States from recovering said lands and that each of such conveyances and deeds and pretended purchases is void in equity and should be so declared in favor of the United States.

XV.

That thereafter the said defendant, C. A. Smith, intending further to defraud and deceive this complainant and to corruptly and fraudulently prevent complainant from recovering said lands hereinbefore described complied with the forms of the laws of the State of Minnesota relating to the organization of private corporations and on or about the 24th day of May, 1906, caused to be filed a certificate of the articles of incorporation in the office of the Secretary of State in and for said State of Minnesota. That said articles, or certificate of incorporation was executed by the said C. A. Smith, his wife Johanna Smith, and his son Vernon Smith, as incorporators, and it was stated in the said articles of incorporation that the name by which the corporation sought to be organized should be known, should be Linn & Lane Timber Company. [74]

That thereafter the said defendant, C. A. Smith, complied with the forms of the laws of the State of

Minnesota necessary to authorize the said Linn & Lane Timber Company to transact business as a corporation in the State of Minnesota. That the purposes of the formation of said corporation was to form a holding company for lands in the State of Oregon owned or claimed by the said defendant C. A. Smith. That your orator is informed and believes that all stock of said corporation, if any was ever issued, to persons other than the said C. A. Smith, was and is held for the use and benefit of the said defendant, C. A. Smith. That said corporation is named in the title of this amended bill as a defendant herein.

That thereafter the defendant, C. A. Smith, for the purpose among others of fraudulently and corruptly preventing complainant from recovering the lands hereinbefore described on or about the 25th day of June, 1906, caused to be filed in the office of the Secretary of State of the State of Oregon, a certified copy of the articles and certificate of incorporation of said Linn & Lane Timber Company together with what purported to be the appointment of the defendant, F. A. Kribs as attorney in fact of said corporation in and for the State of Oregon; and ever since said time that the said defendants, C. A. Smith and F. A. Kribs have and do now pretend that the said defendant, F. A. Kribs, was and is such attorney in fact in and for the State of Oregon of said Linn & Lane Timber Company.

XVI.

That thereafter on or about the 9th day of September, 1908, the defendant, C. A. Smith, caused to be filed for record with the Recorder of Conveyances

for Linn County, Oregon, two certain deeds purporting to have been executed by Nils O. Werner and Eva C. Werner, his wife, and [75] the said C. A. Smith and Johanna A. Smith, his wife, bearing dates, respectively, the 15th day of August, 1907, and the 4th day of June, 1908, each purporting to convey to the defendant, Linn & Lane Timber Company, the lands hereinbefore described. And your orator further avers and alleges that said deed of the said Nils O. Werner and his said wife, Eva C. Werner, was made and executed to the said Linn & Lane Timber Company without consideration and with full knowledge upon the part of said corporation of the fraudulent practice hereinbefore set forth and for the use and benefit of the said defendant, C. A. Smith and for the corrupt and fraudulent purpose of preventing your complainant from recovering said land and that the said deed of the said defendant C. A. Smith and Johanna A. Smith, his wife, was executed to the defendant Linn & Lane Timber Company for the corrupt and fraudulent purpose of preventing complainant from recovering the said lands and without consideration paid therefor, and with full knowledge on the part of said corporation of the fraudulent practices hereinbefore set forth and for the use and benefit of the said defendant, C. A. Smith and that said deed was not executed at the date which it bears upon its face, but was executed by the said defendant, C. A. Smith and Johanna A. Smith, his wife, long after the commencement of this suit and shortly prior to the time the same were offered for record as aforesaid, and that your orator had no knowledge

or notice of said deeds of said Nils O. Werner and wife, and the said C. A. Smith and Johanna A. Smith, his wife, until after the same were offered for record as aforesaid, and the existence of the same was concealed from your orator up until the time they were offered for record as aforesaid for the corrupt and fraudulent purpose of preventing complainant from recovering [76] said lands and your orator had no means of discovering the existence of said last mentioned deeds until they were so offered for recording.

XVII.

And your orator further shows unto your Honors that he is informed that the defendant, First Trust and Savings Bank of Illinois, claims to have some interest in said lands patented to the defendants, as hereinbefore set forth, but your orator avers that whatever interest or claim the said First Trust and Savings Bank of Illinois has, or claims to have, in said lands is subject and inferior to the rights of complainant therein, and that the said First Trust and Savings Bank of Illinois procured and received whatever interest or claim it has in or to said lands with full notice of the fraud so perpetrated upon the complainant, as alleged in this bill of complaint, and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned, and to prevent the United States from recovering said lands, and that such claim or right of the First Trust and Savings Bank of Illinois is void in equity and should be so declared in favor of the United States, and any pretended encumbrance

or lien alleged to be existing in favor of the said First Trust and Savings Bank of Illinois should be declared void by the decree of this Honorable Court.

XVIII.

And your orator further avers that the false and fraudulent representations and corrupt and unconscionable practices made and engaged in by the defendants as hereinbefore set forth, were all made with the intent and for the purpose of deceiving and defrauding the United States out of the use of, title to and possession of the lands hereinbefore [77] described, and that your complainant relied upon said false and fraudulent representations so made as aforesaid, and by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught, and any and every purchase or pretended purchases or incumbrances or liens or pretended incumbrances or apparent lien alleged by defendants or any of them to be existing at law or in equity upon the lands hereinbefore described or any portion thereof should be declared void by the decree of this Honorable Court.

XIX.

Your orator further shows unto your Honor that immediately prior to the commencement of this suit your orator caused diligent search and inquiry to be made for the purpose of ascertaining the existence of any and all right, title and interest in any manner asserted or claimed in or to any of said lands, together with the names of any and all parties so asserting or claiming the same, and particularly

those claiming to have the legal title thereto, by succession from the aforesaid original patentees or otherwise, for the purpose of setting forth any and all such alleged right, title and interest in the original bill of complaint herein, and making all persons and corporations claiming or asserting the same, parties defendant to this suit.

And in that behalf your orator caused inquiries to be made of all persons known to your orator who would be likely to possess any information upon the subject aforesaid, and caused diligent and accurate search to be made of the public records of Linn County, Oregon, wherein all of said lands are situated (and being the only public records known [78] to your orator to contain any information upon said subject), including the registry records of said county pertaining to mortgages, deeds and other conveyances, and the records of the assessor's and sheriff's offices of said county concerning the assessment of said lands and the payment of taxes thereon.

That such search and inquiry did not reveal any right, title or interest in or to any of said lands, in favor of, or claimed or asserted by, said Linn & Lane Timber Company, nor the existence of said Linn & Lane Timber Company; on the contrary said search and inquiry disclosed that the defendants alleged in complainant's original bill of complaint to be claiming certain interests and estates in said lands were the only persons asserting or claiming any right, title or interest in or to any of said lands, and further disclosed that they, the said original defendants, had continuously asserted such claims subsequent to the time said alleged deeds of conveyance to said Linn &

Lane Timber Company purport to have been executed, and down to and until the time of the filing of the original bill of complaint herein, that is to say: the registry records of said county disclosed that the legal title to all of said lands was in the aforesaid alleged grantors of said Linn & Lane Timber Company, and the records of the assessor's and sheriff's offices of said county disclosed that all of said lands were assessed in the names of, and the taxes assessed thereupon were paid by, said alleged grantors of said Linn & Lane Timber Company; and said inquiries made by and on behalf of your orator as aforesaid revealed the fact to be, and your orator alleges, that all of the lands described in this amended bill of complaint now are, and at all times have been, unoccupied, and none of said lands have ever been in the [79] actual occupation or possession of any person or corporation, or at all.

And your orator says that if said Linn & Lane Timber Company ever acquired any alleged right, title or interest in or to any of said lands, it has at all times thereafter until September 9th, 1908, permitted the public records of said Linn County to show that its alleged grantors held the legal title to all of said lands, and has at all times permitted all of said lands to be assessed in the names of its aforesaid alleged grantors, and has further permitted said records to show that the taxes assessed upon all of said lands were paid by its aforesaid alleged grantors; and your orator further says that one of the said alleged grantors of said Linn & Lane Timber Company, to wit: C. A. Smith, in whose name a large part of said lands have been assessed and taxes thereon

paid as aforesaid, was one of the incorporators of said Linn & Lane Timber Company as aforesaid, and at all times has been and still is the President thereof.

By reason of the premises your orator was kept in ignorance of any and all pretended rights and interests of said Linn & Lane Timber Company in or to any of said lands, until apprised thereof by the filing of that certain plea interposed herein on the 5th day of September, 1908, by certain of the original defendants herein, whereby the aforesaid alleged rights and interests of said Linn & Lane Timber Company are set forth; and further by reason of the premises your orator was induced to believe, and at all times until apprised to the contrary as aforesaid did believe, that no right, title or interest of any kind or nature was asserted or claimed by any person or corporation other than as set forth in the original bill of complaint herein. [80]

FORASMUCH, THEREFORE, as your orator is without adequate remedy in the premises, except in a court of equity where such matters are properly relievable, and to the end therefor, that your orator may have that relief which may only be obtained in a court of equity and in this court having jurisdiction thereof under the aforesaid facts as alleged, and that the defendants and each of them may answer the premises and show, if he or she can, why your complainant should not have the relief herein prayed for.

Your orator prays and requests of your Honors to grant unto your complainant a writ of subpoena to be directed to said defendant, Linn and Lane Timber Company, and to such defendants as have not been

served with process herein and each of them commanding him or her at a day certain, and under a penalty therein to be limited to personally appear before this Honorable Court, then and there, well, true, direct and perfect answer make to all and singular the premises, but not under oath or affirmation, the benefit whereof is hereby expressly waived, and to stand, perform and abide by such order and decree as may be made against them in the premises as to your Honors shall *meet* meet and agreeable to equity and that the defendants herein that have been heretofore served with process or have heretofore appeared herein shall make like answer at a day certain to be named by your Honors under like conditions, and that your complainant may have such further and other relief in the premises as the nature of the circumstances may require, and particularly that your orator may have a decree cancelling and annulling and setting aside all liens and encumbrances and pretended liens and encumbrances upon said lands, and divesting the [81] defendants, and each of them, of and from all right, title, estate in law or equity and of all claim or interest of whatsoever kind or nature that they or any of them may assert thereto, and in and about the premises may make such further orders or decree as may be meet and agreeable to equity, and that your complainant may have its costs in this su^t, and recover such damages and penalties herein as to your Honors the circumstances may

seem to warrant and as may seem meet and agreeable to equity.

CHARLES J. BONAPARTE,
Attorney General of the United States.

JOHN McCOURT,
United States Attorney for the District of Oregon.

TRACY C. BUCKER,
Special Assistant to the Attorney General of Coun-
sel.

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn, on oath depose and say: That I am United States Attorney for the District of Oregon, and that the facts set forth in the foregoing bill of complaint are true as I verily believe.

JOHN McCOURT.

Subscribed and sworn to before me this 3d day of November, 1908.

[Seal]

B. AMY,
Notary Public for Oregon.

Due, legal and timely service of the foregoing Amended Bill of Complaint, by copy duly certified to by John McCourt, United States Attorney for the

District of Oregon, is hereby admitted at Portland, Oregon, this 4th day of November, 1908.

DOLPH, MALLORY, SIMON & GEARIN,

Per M.

Attys. for _____.

ALBERT H. TANNER,

Atty. for Fred. A. Kribs et al.

W. W. BANKS,

Atty. for Henry Blakely et al.

L. H. TARPLEY.

Amended Bill of Complaint. Filed November 16, 1908. G. H. Marsh, Clerk. [82]

And afterwards, to wit, on Monday, the 16th day of November, 1908, the same being the 37th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [83]

[**Order Directing Issuance of Subpoena Ad Respondendum to Linn & Lane Timber Co., etc.**]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants Nils O. Werner and C. A. Smith, by Mr. John M. Gearin, of counsel, and the defendant Frederick A. Kribs, by Mr. Albert H. Tanner, of counsel; Whereupon, it appearing to the Court that the plaintiff has filed *and* Amended Bill of Complaint herein, in which the Linn and Lane Timber Company is

made a party defendant in addition to the defendants named in the original Bill of Complaint, on motion of said plaintiff IT IS ORDERED that a Subpoena ad Respondendum, returnable as provided by the Equity Rules on the Rule day in December, 1908, issue to said defendant, Linn and Lane Timber Company:

And it is further ORDERED that the remaining defendants in this cause answer, demur or plead to said Amended Bill of Complaint within thirty days from this date.

CHARLES E. WOLVERTON,
Judge.

Filed November 16, 1908. G. H. Marsh, Clerk.

[84]

And afterwards, to wit, on the 16th day of November, 1908, there was issued out of said court a Subpoena ad Respondendum on Amended Bill of Complaint, in words and figures, as follows, to wit: [85]

[Marshal's Return to Subpoena Ad Respondendum.]

United States of America,
District of Oregon,—ss.

I, Charles J. Reed, United States Marshal for the District of Oregon, hereby certify that I received the within writ of subpoena ad respondendum on the 18th day of November, 1908, and that I served the same upon the 18th day of November, 1908, within the State and District of Oregon, and within Multnomah County thereof, upon the within-named defend-

ant, Linn and Lane Timber Company, a corporation, by personally delivering to Frederick A. Kribs in person, as attorney in fact and authorized agent of said Linn and Lane Timber Company, a true copy of said subpoena ad respondendum, duly and regularly certified to be such copy by G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, together with a true copy of the bill of complaint herein, duly and regularly certified to be such copy by John McCourt, United States Attorney for the District of Oregon; the said Frederick A. Kribs being then and there a citizen and resident of the State of Oregon, residing in Portland, Multnomah County, Oregon, and being the duly appointed, true and lawful attorney in fact and authorized agent of the Linn and Lane Timber Company, a corporation, defendant, authorized to make and accept service of all writs, processes and summonses in any action, suit or proceeding in any of the Courts of the State of Oregon or United States Courts therein, and upon whom all lawful writs, processes and summonses may be served to the same effect as though the said Linn and Lane Timber Company existed in the State of Oregon, requisite and necessary to give competent and complete jurisdiction of said Linn and Lane Timber Company to any of said Courts.

In witness whereof I have hereunto set my hand this 20th day of November, 1908.

CHARLES J. REED,
U. S. Marshal for the District of Oregon.
Leonard Becker,
Deputy. [86]

(Title of Court and Cause.)

**Subpoena Ad Respondendum [to Linn and Lane
Timber Co.].**

The President of the United States of America, to
Linn and Lane Timber Company, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the City of Portland, in said District, on the first Monday of December next, which will be the 7th day of December, A. D. 1908, to answer the exigency of an amended Bill of Complaint exhibited and filed against you in our said court, wherein The United States of America is complainant, and you are defendant, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or your deputy, to make due service of this our Writ of Subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 16th day of November, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States, the one hundred and thirty-third.

[Seal]

G. H. MARSH,
Clerk.

By _____,
Deputy Clerk.

MEMORANDUM PURSUANT TO EQUITY
RULE NO. 12 OF THE SUPREME COURT
OF THE UNITED STATES.

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso*.

[Endorsed]: Doc. 396, p. 70. No. 3320. In the Circuit Court of the United States for the District of Oregon. In Equity. The United States vs. Nils O. Werner et al. Subpoena Ad Respondendum. Returned and filed Nov. 20, 1908. (Signed) G. H. Marsh, Clerk. By _____, Deputy Clerk. [87]

And afterwards, to wit, on Wednesday, the 2d day of December, 1908, the same being the 50th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [88]

[Order Allowing Defendants Time to Plead to Amended Bill.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff in the above-entitled cause by Mr. John McCourt, United States Attorney, and the defendants Nils O. Werner and C. A. Smith, by Mr. John M. Gearin, of counsel, whereupon, on motion of said defendants, IT IS ORDERED that all defendants be, and they are

hereby, allowed until Monday, February 1, 1909, in which to plead to the amended bill of complaint herein. [89]

And afterwards, to wit, on the 29th day of December, 1908, there was duly filed in said court a praecipe for the appearance of the defendant, Linn and Lane Timber Company, in words and figures as follows, to wit: [90]

[Praecipe for Entry of Appearance for Linn and Lane Timber Co.]

(Title of Court and Cause.)

To the Clerk of the Above-entitled Court:

You will please enter our appearance as solicitors and counsel for defendant, the Linn & Lane Timber Company, in the above-entitled cause.

Dated January 4, 1909.

JOHN LIND.

A. EULAND.

W. M. JEROME.

JNO. M. GEARIN.

DOLPH, MALLORY, SIMON & GEARIN.

Notices and copies in the above-entitled cause may be served on each of the undersigned by delivering the same to John M. Gearin, Esq., at his office in the Mokawk Building, Portland, Ore.

JOHN LIND,

A. EULAND,

W. M. JEROME,

Solicitors and Counsel for Defendant, the Linn & Lane Timber Company.

Notice of Appearance. Filed December 29, 1908.
G. H. Marsh, Clerk U. S. Circuit Court, District of
Oregon. [91]

And afterwards, to wit, on the 29th day of January,
1909, there was duly filed in said court an An-
swer of Nils O. Werner et al., in words and fig-
ures as follows, to wit: [92]

**[Joint and Several Answers of Nils O. Werner et al.
to Amended Bill.]**

(Title of Court and Cause.)

The joint and several answers of Nils O. Werner,
Charles A. Smith and Frederick A. Kribs, defend-
ants, to the amended bill of complaint of the United
States of America, the complainant.

These defendants respectively now and at all
times hereafter saving and reserving to themselves
respectively all and all manner of benefit of exception
or otherwise that can or may be had or taken to the
many errors, uncertainties and imperfections in the
said amended bill of complaint contained, for answer
thereto, or to so much thereof as these defendants
are advised it is material or necessary for them to
make answer to, answering say:

FIRST. These defendants respectively admit
that the First Trust and Savings Bank of Illinois has
been and is a corporation, duly organized under the
laws of the State of [93] Illinois, and that defend-
ants Nils O. Werner and Eva C. Werner are and have
been husband and wife, and that the lands described
in paragraph III of the said amended bill were a part
of the public domain of the complainant prior to the

month of June, 1900, and that the complainant had the legal title to the same until the 12th day of August, 1902; but these defendants respectively deny that complainant has been the owner of any equitable title, or of any other right, title, or interest whatsoever, in any of said lands since the last mentioned date.

SECOND. These defendants respectively deny that S. A. D. Puter, C. A. Smith, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers, Frederick A. Kribs, John A. Willd, or any of them, either together with other persons, or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the lands described in the said amended bill, or any of such lands. And these defendants respectively say it is not true that it was ever understood or agreed between the persons named in this paragraph, or any of them, that S. A. D. Puter should solicit or procure any person, either together with himself or otherwise, to make application for or entry on any of said lands, under any Act of Congress or otherwise, or that said Puter should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should enure to the benefit of any persons named in this paragraph, or that any person after filing on any of said lands, after receiving certificates showing that he had been permitted to file thereon, should or would execute or deliver to said C. A. Smith, or to said John A. Willd, any deed or other conveyance of any of said lands, or execute or deliver to Frederick

A. Kribs or S. A. D. Puter any note, or any mortgage on any of said lands; or that said Puter should promise any person to pay [94] any expense of filing or of making proof, or the price required to be paid to the complainant, or any part of such expense or purchase price.

THIRD. These defendants respectively have no reason to doubt, and therefore believe, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen and entrywomen in said amended bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by John L. Green was in Section 35, and the land applied for by Zebulin Smith was the northwest quarter of Section 34, and the land applied for by Thomas Wilson was in Section 28, all in township 14, range 3 east.

FOURTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter solicited or procured any of said entrymen and entrywomen other than himself to make any of the aforesaid applications to purchase and enter said lands, and therefore leave the complainant to make such proof thereof as it

shall be able to produce.

FIFTH. These defendants respectively say it is not true that any of said applicants, prior to making or filing his or her said application to purchase or enter said land, made a contract or agreement with S. A. D. Puter, whereby such applicant promised or agreed to purchase or enter said lands, or any part of same, for the use or benefit of C. A. Smith, [95] Frederick A. Kribs, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers and John A. Willd, or any of them, or that any of said applicants, prior to making or filing his or her said application agreed to transfer, convey or set over any of said lands, to C. A. Smith or John A. Willd, or promised or agreed to execute or deliver any note, secured by mortgage on any of said lands, to S. A. D. Puter or Frederick A. Kribs, or that S. A. D. Puter, prior to the making or filing his application, entered into any agreement with C. A. Smith or Frederick A. Kribs to transfer or convey, or set over, any of said lands to said C. A. Smith or John A. Willd.

SIXTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter, prior to the making or filing of said applications, promised or agreed to pay any of said applicants the sum of \$100, or any other sum, or the expense of filing or of making final proof on any of said lands, or the purchase price for any of said lands, or any part of such expense or purchase price, and defendants therefore leave the complainant to make such proof thereof as it shall be

able to produce.

SEVENTH. These defendants respectively have no reason to doubt and therefore believe that the Timber and Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty these defendants crave leave to refer to said statements when produced.

EIGHTH. These defendants respectively have no reason to doubt, and therefore believe, that upon filing the aforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper [96] as required by law, and that satisfactory evidence that said notices had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evidence to said Register that the land covered by his or her application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement; either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinabar, copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant \$400 as payment for the land described in the application of such applicant at the rate of \$2.50 per acre, and permitted each applicant to enter the land described in his or her application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater cer-

tainty as to said final proofs and certificates of purchase these defendants crave leave to refer to the same when produced.

NINTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter caused any of the notices referred to in the foregoing paragraph to be published in a newspaper or furnished to the Register of said Land Office evidence that any of said notices had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and defendants therefore leave the complainant to make such proof thereof as it shall be able to produce.

TENTH. These defendants respectively say that defendant Frederick A. Kribs resided in the State of Oregon during the years 1900 to 1903, both inclusive, and that during this period, he was engaged in buying and selling timber lands situated in the States of Oregon and California, and that [97] during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same

by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States during said period, it was considered that if it should be generally known in any locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose name title might be taken to such lands as said Smith might purchase pursuant to said agreement. [98]

ELEVENTH. These defendants respectively say that between the 15th day of April and the 17th day of May, 1900, defendant Frederick A. Kribs furnished the aforesaid entrymen and entrywomen, respectively (except S. A. D. Puter and Sadie E. Puter), the sum of \$600 to enable them to pay to the complainant the purchase price of \$400 mentioned in

the amended bill, and the expense of making final proof, and that the money so furnished was used by said entrymen and entrywomen, respectively, to pay such purchase price and expense, and that as security for the money so furnished said Kribs received from each of said entrymen and entrywomen the mortgage for \$600 referred to in said amended bill. And these defendants respectively say that between the 15th day of April and the 20th day of May, 1900, said Kribs bargained with the entrymen and entrywomen named in the amended bill, including S. A. D. Puter and Sadie E. Puter, for the purchase from them, respectively, at the price of \$5.25 per acre, of the land for which said entrymen and entrywomen had theretofore respectively made and filed the timber and stone sworn statements described in the amended bill, and after he had so bargained for the purchase of said lands said Kribs offered the same to defendant C. A. Smith in accordance with the aforesaid agreement between them, and said Smith thereupon accepted said lands, and paid for the same \$5.25 per acre, and twenty-seven and one-half cents per acre additional, in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accordance with the said agreement, directed the conveyances from said entrymen and entrywomen, respectively, to be made to John A. Willd, and pursuant to such direction, deeds for said lands from said entrymen and entrywomen, respectively, were thereupon executed and delivered to said John A. Willd, which deeds were also executed [99] and delivered by the hus-

band and wife of each of the entrymen and entrywomen who was married, and said deeds contained respectively a covenant on the part of the entrymen and entrywomen, executing the same, that he or she and his and her heirs, executors and administrators, would warrant and defend the title to the land conveyed against the lawful claims and demands of all persons whomsoever.

TWELFTH. These defendants respectively say that Frederick A. Kribs, Charles A. Smith and John A. Willd, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that in furnishing the money and taking the mortgages referred to in the foregoing paragraph, and in accepting and paying for the conveyances referred to in said paragraph, said Kribs, Smith and Willd respectively, acted in good faith, each believing that said entrymen and entrywomen respectively, could then rightfully and lawfully mortgage, sell and convey the lands covered by their respective entries.

THIRTEENTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that any statement or representation in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of, or title to, or possession of, any of said lands, and these defendants therefore leave complainant to make such proof thereof as it may be able to produce.

FOURTEENTH. These defendants respectively admit that on the 12th day of August, 1902, complainant issued patents to said entrymen and entrywomen and thereby granted and conveyed [100] to them respectively the land covered by their respective applications and entries.

FIFTEENTH. These defendants respectively have been informed and believe that soon after the issuance of the final certificates mentioned in the amended bill, complainant suspended the issuance of patents for the lands covered by said final certificates, and that complainant thereupon for a period of nearly two years investigated and examined all matters and things relating to the entries described in the amended bill, and that complainant did not issue the patents hereinbefore referred to until said investigation and examination had been made and completed to the satisfaction of the complainant.

SIXTEENTH. These defendants respectively say that John A. Willd and his wife conveyed said lands to Robert F. Greacen on November 2d, 1900, and that said Greacen conveyed said lands to Hubert E. Rogers on February 11th, 1901, and that said Rogers conveyed said lands to Nils O. Werner on December 21, 1904. And these defendants respectively say that each of said conveyances was made at the instance and request of said Charles A. Smith, and that each of said grantees took title under the conveyance to him for the use and benefit of and in trust for said Smith, and that said Smith procured said conveyances to be made for the purpose of procuring a loan on said lands without disclosing that he was the owner thereof, or that he was mortgaging

the same. And these defendants respectively say that on December 21, 1904, after said lands had been so conveyed to said Werner, said Charles A. Smith procured a loan of forty thousand dollars on the security of a promissory note for that sum made by said Werner to one Charles M. Amsden, and a mortgage on said lands securing said note, executed by said Werner and his wife, to said Amsden, which said note and mortgage were assigned and transferred by said Amsden to defendant, [101] the First Trust and Savings Bank, on the 10th day of January, 1905, and that said loan and the said note and mortgage securing the same were afterwards fully paid and satisfied by said Charles A. Smith.

SEVENTEENTH. These defendants respectively say it is not true that any of the deeds referred to in the next foregoing paragraph was given to prevent complainant from recovering any of said lands.

EIGHTEENTH. These defendants respectively say that on or about the 31st day of May, 1906, defendant, the Linn and Lane Timber Company, was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith and John Lind, and was recorded in the office of the Secretary of State for said State of Minnesota on May 24, 1906, but said certificate was not executed by Vernon Smith. And these defendants respectively say that said Company was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and

to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale." [102]

NINETEENTH. These defendants respectively say it is not true that said Linn and Lane Timber Company was organized by C. A. Smith or any other person with intent to defraud or deceive complainant, or to prevent complainant from recovering any of the lands described in the amended bill.

TWENTIETH. These defendants respectively say that on or about the 25th day of June, 1906, defendant, the Linn and Lane Timber Company, caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but these defendants respectively say it is not true that C. A. Smith or any other person, caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

TWENTY-FIRST. These defendants respectively admit that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in fact in and for said State of Oregon for said Company.

TWENTY-SECOND. These defendants respectively say that said Linn and Lane Timber Company was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which said Company was named as grantee, all dated on said day; that one of said deeds was for the lands described [103] in the amended bill and certain other lands in Linn County, Oregon, and is one of the deeds referred to in paragraph XVI of the amended bill; that one of the said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of said Company, held at the City of Minneapolis in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to said Company the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of said Company, which offer was on said day, and at said meeting accepted by said Company, and pursuant thereto said three deeds were on said date de-

livered by said Charles A. Smith to said Company and the said capital stock of said Company was at the same time issued by said Company in accordance with directions given by said Charles A. Smith as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to said Company for said stock, said Smith, on August 15, 1907, procured Nils O. Werner and Eva C. Werner, his wife, to execute and deliver to said Company the deed from them referred to in said paragraph XVI of the amended bill; and these defendants respectively say said company purchased the lands described in said amended bill at the time and in the manner and for the consideration aforesaid, in good faith, believing that Charles A. Smith and Nils O. Werner were then well and lawfully seized of said lands in fee simple and could rightfully and lawfully convey the same to said Company and said Company had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant. [104]

TWENTY-THIRD. These defendants respectively admit that the aforesaid two deeds from Charles A. Smith and Nils O. Werner, the same being the deeds referred to in paragraph XVI of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but deny that they were so filed by Charles A. Smith.

TWENTY-FOURTH. These defendants respectively say it is not true that either of the deeds re-

ferred to in the next foregoing paragraph was without consideration or that any of these defendants or said Company had notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other day than the date on which it purports to have been executed.

TWENTY-FIFTH. These defendants respectively say that they do not know and cannot state as to their or either of their belief or otherwise whether or not it is alleged or is the fact that the complainant did not know of the existence of the deeds referred to in paragraph XVI of the amended bill until the same were offered for record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title or interest in or to any of the aforesaid lands, and therefore leave complainant to make such proof thereof as it may be able to produce.

TWENTY-SIXTH. These defendants respectively say [105] that it is not true that all the capital stock of said Linn and Lane Timber Company has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of this defendant,

but on the contrary that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the City of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said Bank, amounting in the aggregate to upwards of \$350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for \$5,000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith transferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of which direct to said Bank, and one each to B. F. Nelson and C. C. Wyman in trust for said bank, to further secure his, the said Smith's aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of \$50,000. Said Swedish-American National Bank held the five hundred and ten shares transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, assigned and transferred to the Northwestern National Bank of Minneapolis the

aforesaid [106] promissory notes and other obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of said Company as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more than \$250,000.

TWENTY-SEVENTH. These defendants respectively believe that the First Trust and Savings Bank of Illinois has never claimed any interest in the lands described in the complaint except a lien thereon by virtue of the mortgage for \$40,000 hereinbefore referred to, and that since the payment of said mortgage, as hereinbefore stated, said Company has not claimed any interest in said lands.

TWENTY-EIGHTH. These defendants respectively aver that if the complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which these defendants respectively do in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is guilty of gross laches in not bringing suit upon such cause of action before the lands described in the amended bill were conveyed to said Linn and Lane Timber Company and pray that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

TWENTY-NINTH. These defendants respectively are informed and believe that Harry C. Barr

and John J. Jaggy each left heirs who are now living and within the jurisdiction of this court, but the names and places or residence of such [107] heirs are unknown to these defendants respectively; and these defendants respectively say that they are advised and believe that said heirs are necessary and indispensable parties to this suit, and pray that said amended bill be dismissed because said heirs have not been made parties to the same.

And these defendants respectively deny all and all manner of unlawful combinations and confederacy wherewith they are charged by said amended bill; without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

N. O. WERNER.
C. A. SMITH.
FRED A. KRIBS.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Of Counsel for said Nils O. Werner and
Charles A. Smith.

AUBERT H. TANNER,

Of Counsel for said Frederick A. Kribs.

Answer of Nils O. Werner and Others. Filed Jan. 29, 1909. G. H. Marsh, Clerk. [108]

And afterwards, to wit, on the 29th day of January, 1909, there was duly filed in said court an answer of the Linn and Lane Timber Company, in words and figures as follows, to wit: [109]

[Answer of Linn and Lane Timber Co. to Amended Bill.]

(Title of Court and Cause.)

The answer of Linn and Lane Timber Company, one of the defendants, to the amended bill of complaint of the United States of America, the complainant,

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

FIRST. This defendant avers that if the complainant ever had any cause of suit or action against this defendant for or in respect of the several allegations and complaints in complainant's said amended bill contained, or any of them, the same accrued to the complainant upwards of six years before the filing of the bill of complaint in this suit against this [110] defendant, or the suing out process thereon against this defendant; and that the bill of complaint in this suit against this defendant

was not filed, nor was the process thereon against this defendant issued within six years after the date of the issuance of the several patents, which complainant in its said amended bill prays to have annulled and set aside; and this defendant claims the benefit of an Act of Congress respecting the limitation of suits by the United States to vacate and annul patents, approved March 3, 1891, and entitled "An Act to amend section eight of an Act approved March third, 1891, entitled An Act to repeal timber culture laws and for other purposes," in bar of the complainant's said bill and all the relief sought by the complainant in this suit; and this defendant prays that it may have the same benefit from said Act as if it had formally pleaded the same.

SECOND. This defendant, insisting on its aforesaid defense, for further answer admits that the First Trust and Savings Bank of Illinois has been and is a corporation, duly organized under the laws of the State of Illinois, and that defendants Nils O. Werner and Eva C. Werner are and have been husband and wife, and that the lands described in paragraph III of the said amended bill were a part of the public domain of the complainant prior to the month of June, 1900, and that the complainant had the legal title to the same until the 12th day of August, 1902; but this defendant denies that complainant has been the owner of any equitable title, or of any other right, title, or interest whatsoever, in any of said lands since the said last mentioned date.

THIRD. This defendant denies that S. A. D. Puter, C. A. Smith, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers, Frederick A. Kribs,

John A. Willd, or any of them, either together with other persons, or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the [111] lands described in the said amended bill, or any of such lands. And the defendant says it is not true that it was ever understood or agreed between the persons named in this paragraph, or any of them, that S. A. D. Puter should solicit or procure any person, either together with himself or otherwise, to make application for or entry on any of said lands, under any Act of Congress or otherwise, or that said Puter should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should enure to the benefit of any persons named in this paragraph, or that any person after filing on any of said lands, after receiving certificate showing that he had been permitted to file thereon, should or would execute or deliver to said C. A. Smith, or to said John A. Willd, any deed or other conveyance of any of said lands, or execute or deliver to Frederick A. Kribs or S. A. D. Puter any note, or any mortgage on any of said lands; or that said Puter should promise any person to pay any expense of filing or of making proof, or the price required to be paid to the complainant, or any part of such expense or purchase price.

FOURTH. This defendant has no reason to doubt, and therefore believes, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen and entrywomen in said amended

bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by John L. Green [112] was in section 35, and the land applied for by Zebulin Smith was the northwest quarter of section 34, and the land applied for by Thomas Wilson was in section 28, all in township 14, range 3 east.

FIFTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter solicited or procured any of said entrymen and entrywomen other than himself to make any of the aforesaid applications to purchase and enter said lands, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

SIXTH. This defendant says it is not true that any of said applicants, prior to making or filing his or her application to purchase or enter said lands, made a contract or agreement with S. A. D. Puter, whereby such applicant promised or agreed to purchase or enter said lands, or any part of the same, for the use or benefit of C. A. Smith, Frederick A. Kribs, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers and John A. Willd, or any of them, or that any of said applicants, prior to making or filing his or her said application agreed to transfer, convey or set over any of said lands, to C. A. Smith or John A. Willd, or promised or agreed to execute or deliver

any note, secured by mortgage on any of said lands, to S. A. D. Puter or Frederick A. Kribs, or that S. A. D. Puter, prior to the making or filing his application, entered into any agreement with C. A. Smith or Frederick A. Kribs to transfer, or convey, or set over, any of said lands to said C. A. Smith or John A. Willd.

SEVENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter, prior to the making or filing of said applications, promised or agreed to pay any of said applicants the sum of \$100, or any other sum, or the expense of [113] filing or of making final proof on any of said lands, or the purchase price for any of said lands, or any part of such expense or purchase price, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

EIGHTH. This defendant has no reason to doubt, and therefore believes that the Timber and Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty this defendant craves leave to refer to said statements when produced.

NINTH. This defendant has no reason to doubt, and therefore believes, that upon filing the aforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper as required by law, and that satisfactory evidence that said notices

had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evidence to said Register that the land covered by his or her application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant \$400 as payment for the land described in the application of such applicant at the rate of \$2.50 per acre, and permitted each applicant to enter the land described in his or her application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater certainty as to said final proofs and certificates of purchase this defendant craves leave [114] to refer to the same when produced.

TENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter caused any of the notices referred to in the foregoing paragraph to be published in a newspaper or furnished to the Register of said Land Office evidence that any of said notices had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

ELEVENTH. This defendant is informed and believes that defendant Frederick A. Kribs resided in the State of Oregon during the years 1900 to 1903,

both inclusive, and that during this period, he was engaged in buying and selling timber lands situated in the States of Oregon and California, and that during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such [115] lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States during said period, it was considered that if it should be generally known in any

locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose names title might be taken to such lands as said Smith might purchase pursuant to said agreement.

TWELFTH. This defendant is informed and believes that between the 15th day of April and the 17th day of May, 1900, defendant Frederick A. Kribs furnished the aforesaid entrymen and entrywomen, respectively (except S. A. D. Puter and Sadie E. Puter), the sum of \$600 to enable them to pay to the complainant the purchase price of \$400 mentioned in the amended bill, and the expense of making final proof, and that the money so furnished was used by said entrymen and entrywomen, respectively, to pay such purchase price and expense, and that as security for the money so furnished said Kribs received from each of said entrymen and entrywomen the mortgage for \$600 referred to in said amended bill. And this defendant is informed and believes that between the 15th day of April and the 20th day of May, 1900, said Kribs bargained with the entrymen and entrywomen named in the amended bill, including S. A. D. Puter and Sadie E. Puter, for the purchase from them, respectively, at the price of \$5.25 per acre, of the land for which said entrymen and entrywomen had theretofore respectively made and filed the timber and stone [116] sworn statements

described in the amended bill, and after he had so bargained for the purchase of said lands said Kribs offered the same to defendant C. A. Smith in accordance with the aforesaid agreement between them, and said Smith thereupon accepted said lands, and paid for the same \$5.25 per acre, and twenty-seven and one-half cents per acre additional, in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accordance with the said agreement, directed the conveyances from said entrymen and entrywomen, respectively, to be made to John A. Willd, and pursuant to such direction, deeds for said lands from said entrymen and entrywomen, respectively, were thereupon executed and delivered to said John A. Willd, which deeds were also executed by the husband and by the wife of each of the entrywomen and entrymen who was married, and said deeds contained respectively a covenant on the part of the entrymen and entrywomen, executing the same, that he or she and his and her heirs, executors and administrators, would warrant and defend the title to the land conveyed against the lawful claims and demands of all persons whomsoever.

. THIRTEENTH. This defendant is informed and believes that Frederick A. Kribs, Charles A. Smith and John A. Willd, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that in furnishing the money and taking the mortgages re-

ferred to in the foregoing paragraph, and in accepting and paying for the conveyances referred to in said paragraph, said Kribs, Smith and Willd respectively, acted in good faith, each believing that said entrymen and entrywomen respectively, could then rightfully and lawfully mortgage, sell and convey the lands covered by their respective entries.

[117]

FOURTEENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that any statement or representation in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of, or title to, or possession of, any of said lands, and this defendant therefore leaves complainant to make such proof thereof as it may be able to produce.

FIFTEENTH. This defendant admits that on the 12th day of August, 1902, complainant issued patents to said entrymen and entrywomen and thereby granted and conveyed to them respectively the land covered by their respective applications and entries.

SIXTEENTH. This defendant has been informed and believes that soon after the issuance of the final certificates mentioned in the amended bill, complainant suspended the issuance of patents for the lands covered by said final certificates, and that complainant thereupon for a period of nearly two years investigated and examined all matters and things relating to the entries described in the

amended bill, and that complainant did not issue the patents hereinbefore referred to until said investigation and examination had been made and completed to the satisfaction of the complainant.

SEVENTEENTH. This defendant has no reason to doubt and therefore believes, that John A. Willd and his wife conveyed said lands to Robert F. Greacen on November 2d, 1900, and that said Greacen conveyed said lands to Hubert E. Rogers on February 11th, 1901, and that said Rogers conveyed said lands to Nils O. Werner on December 21, 1904. And this defendant is informed and believes that each of said conveyances was made at the [118] instance and request of said Charles A. Smith, and that each of said grantees took title under the conveyance to him for the use and benefit of and in trust for said Smith, and that said Smith procured said conveyances to be made for the purpose of procuring a loan on said lands without disclosing that he was the owner thereof, or that he was mortgaging the same. And this defendant is informed and believes that on December 21, 1904, after said lands had been so conveyed to said Werner, said Charles A. Smith procured a loan of forty thousand dollars on the security of a promissory note for that sum made by said Werner to one Charles M. Amsden, and a mortgage on said lands securing said note, executed by said Werner and his wife, to said Amsden, which said note and mortgage were assigned and transferred by said Amsden to defendant, the First Trust and Savings Bank, on the 10th day of January, 1905, and that said loan and the said note and mortgage secur-

ing the same were afterwards fully paid and satisfied by said Charles A. Smith.

EIGHTEENTH. This defendant says it is not true that any of the deeds referred to in the next foregoing paragraph was given to prevent complainant from recovering any of said lands.

NINETEENTH. This defendant says that on or about the 31st day of May, 1906, it was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith, and John Lind, and was recorded in the office of the Secretary of State for said State of Minnesota, on May 24, 1906, but said certificate was not executed by Vernon Smith. And this defendant says that it was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and to conduct forestry, mining and agricultural operations on the same; [119] to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale."

TWENTIETH. This defendant says it is not true that it was organized by C. A. Smith or any other person with intent to defraud or deceive complainant, or to prevent complainant from recovering any of the lands described in the amended bill.

TWENTY-FIRST. This defendant says that on or about the 25th day of June, 1906, it caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but this defendant says it is not true that C. A. Smith or any other person, caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

TWENTY-SECOND. This defendant admits that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in fact in and for said State of Oregon for this defendant.

TWENTY-THIRD. This defendant says that it was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on [120] the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which this defendant was named as grantee, all dated on said day; that one of

said deeds was for the lands described in the amended bill and certain other lands in Linn County, Oregon, and is one of the deeds referred to in paragraph XVI of the amended bill; that one of said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of this defendant, held at the City of Minneapolis in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to this defendant the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of this defendant, which offer was on said day, and at said meeting accepted by this defendant, and pursuant thereto said three deeds were on said date delivered by said Charles A. Smith to this defendant and the said capital stock of this defendant was at the same time issued by this defendant in accordance with directions given by said Charles A. Smith, as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to this defendant for said stock, said Smith, on August 15, 1907, procured Nils O. Werner and Eva C. Werner, his wife, to execute and deliver to this defendant the deed from them referred to in said paragraph XVI of the amended bill; and this defendant says that it purchased the lands described in said amended bill at the time and in the manner and for the consideration aforesaid, in good faith, believ-

ing that Charles A. Smith and Nils O. Werner were then well and lawfully seized of said lands in fee [121] simple and could rightfully and lawfully convey the same to this defendant, and this defendant had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant.

TWENTY-FOURTH. This defendant admits that the aforesaid two deeds from Charles A. Smith and Nils O. Werner, the same being the deeds referred to in paragraph XVI of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but denies that they were so filed by Charles A. Smith.

TWENTY-FIFTH. This defendant says it is not true that either of the deeds referred to in the next foregoing paragraph was without consideration, or that this defendant had notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other date than the date on which it purports to have been executed.

TWENTY-SIXTH. This defendant says that it does not know and cannot state as to its belief or otherwise whether or not it is alleged or is the fact that the complainant did not know of the existence of the deeds referred to in paragraph XVI of the

amended bill, until the same were offered for record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title, or interest in or to any of the aforesaid lands, and therefore leaves complainant to make such proof thereof as it [122] may be able to produce.

TWENTY-SEVENTH. This defendant says that it is not true that all the capital stock of this defendant has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of this defendant, but on the contrary that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the City of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said bank, amounting in the aggregate to upwards of \$350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for \$5000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith transferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of

which direct to said Bank, and one each to B. F. Nelson and C. C. Wyman in trust for said Bank, to further secure his, the said Smith's aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of \$50,000. Said Swedish-American National Bank held the five hundred and ten shares transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, assigned, and transferred to the Northwestern National Bank of Minneapolis, the aforesaid promissory notes and other [123] obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of this defendant as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more than \$250,000.

TWENTY-EIGHTH. This defendant believes that the First Trust and Savings Bank of Illinois has never claimed any interest in the lands described in the complaint except a lien thereon by virtue of the mortgage for \$40,000, hereinbefore referred to, and that since the payment of said mortgage, as hereinbefore stated, said Company has not claimed any interest in said lands.

TWENTY-NINTH. This defendant avers that

if the complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which this defendant does in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is guilty of gross laches in not bringing suit upon such cause of action before the lands described in the amended bill were conveyed to this defendant and prays that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

THIRTIETH. This defendant is informed and believes that Harry C. Barr and John J. Jaggy each left heirs who are now living and within the jurisdiction of this court, but the names and places of residence of such heirs are unknown to this defendant; and this defendant says that it is advised and believes that said heirs are necessary and indispensable parties to this suit, and prays that said amended bill be dismissed because said heirs have not been made parties to the same. [124]

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith it is charged by said amended bill; without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be hence

dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[Seal] LINN AND LANE TIMBER COMPANY.

By B. F. NELSON,
President.

C. C. WYMAN,
Secretary.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Of Counsel for said Defendant.

Answer of Linn and Lane Timber Company.
Filed January 29, 1909. G. H. Marsh, Clerk. [125]

And afterwards, to wit, on the 8th day of July, 1909, there was duly filed in said court a replication to answer of Nils O. Werner et al., in words and figures as follows, to wit: [126]

[Replication to Joint and Several Answers of Nils O. Werner et al. to Amended Bill.]

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United States Attorney for the District of Oregon, United States of America, to the joint and several answers of Nils O. Werner, Chas. A. Smith and Frederick A. Kribs, defendants to the amended bill in equity against them and others, by the United States District Attorney for Oregon, in behalf of said United States, in the Circuit Court of the said United States, this repliant for the said United States, saving and

reserving all advantage of exceptions to the said answer, for replication thereto says: that he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law to be answered unto, and that the said answer is uncertain, untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be [127] replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States, he prays as in and by his said bill of complaint in equity he has already prayed.

J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service on me of the within Replication, filed by complainant herein, at Portland, Oregon, on this 20th day of May, 1909.

JOHN M. GEARIN,
One of Solicitors for Defendants.

Replication to Answer of Nils O. Werner et al.
Filed July 8, 1909. G. H. Marsh, Clerk. [128]

And afterwards, to wit, on the 8th day of July, 1909, there was duly filed in said court a replication to answer of Linn and Lane Timber Company, in words and figures as follows, to wit: [129]

[**Replication to Answer of Linn and Lane Timber Co.
et al. to Amended Bill.**]

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United States District Attorney for the District of Oregon, to the answer of the defendant, the Linn and Lane Timber Company, a corporation, and other defendants to the amended bill in equity exhibited against it and others by the United States District Attorney for Oregon, in behalf of said United States in the Circuit Court of the said United States, this repliant for the said United States, saving and reserving all advantage of exceptions to the said answer, for replication thereto says: that he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law to be answered unto, and that the said answer is uncertain, untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed [130] and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States, he prays as in and by his said bill of complaint in equity he has already prayed.

J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service on me of the within Replication filed by complainant herein, at Portland, Oregon, on this 20th day of May, 1909.

JOHN M. GEARIN,
One of Solicitors for Defendant.

Replication to Answer of Linn & Lane Timber Company, et al. Filed July 8, 1909. G. H. Marsh, Clerk. [131]

And afterwards, to wit, on Friday, the 18th day of February, 1910, the same being the 117th judicial day of the regular October, 1909, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [132]

[Order Setting Cause for Final Hearing.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that this cause be, and the same is hereby, set for final hearing on Monday, April 18, 1910. [133]

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court, objections to proposed amendment to Bill of Complaint, in words and figures as follows, to wit: [134]

[Objection of Charles A. Smith and The Linn and Lane Timber Co. to Proposed Amendment to Amended Bill.]

(Title of Court and Cause.)

Defendants Charles A. Smith and the Linn and Lane Timber Company, jointly and severally, object to the proposed amendment to the amended bill of complaint on the following grounds:

1. It does not appear that the notice of the motion for leave to amend, which is prescribed by Equity Rule 29 in case of amendment of a bill after replication, has been given to the other defendants in the suit who would be affected if the amendment was made.

2. It does not appear that the proposed amendment is not made for the purpose of *veration* or delay or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the Bill as required by Equity Rule 29.

3. The proposed amendment would not remedy the want of equity appearing on the face of the Bill.

4. The proposed amendment would enlarge complainant's case and change the character and quality of the relief.

5. The subject matter of the proposed amendment, if material, is in the nature of a cause of action at law, not within jurisdiction of equity.

6. The proposed amendment would render the Bill *multifarious*. [135]

7. The proposed amendment contains the following *impertinent* matter: "Said lands are now of the

reasonable value of Four Hundred Thousand (\$400,000) Dollars.

8. The entire proposed amendment is impertinent matter, because the value of the land at the time of the issuance of the final receiver's receipts less the amount then received by the complainant, would be the measure of damages not the value of the land at any subsequent date.

9. The proposed amendment would require new answers.

Dated April 18th, 1910.

JOHN LIND,
A. UELAND,
W. M. JEROME,
J. M. GEARIN,

Counsel for said Defendants.

Filed April 18, 1910. G. H. Marsh, Clerk United States Circuit Court, District of Oregon. [136]

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court an affidavit of John McCourt, in words and figures as follows, to wit: [137]

[Affidavit, Filed April 18, 1910, of John McCourt.]
(Title of Court and Cause.)

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn, say that I am United States Attorney for the District of Oregon and that the proposed amendment to the bill of complaint herein offered by me as United States At-

torney, on or about the 18th day of February, 1910, is not and was not made for the purpose of vexation or delay and the same is material and relevant in this cause, and could not have been by affiant or by complainant, by reasonable diligence, sooner introduced into the bill; that complainant has had due notice of said proposed amendment, and by the allowance thereof will not be prejudiced in any way; that said amendment is offered in furtherance of justice and to prevent a multiplicity of suit.

JOHN McCOURT,
United States Attorney.

Subscribed and sworn to before me this 18th day of April, 1910.

[Seal]

J. W. WYATT,
Notary Public for Oregon.

Filed April 18, 1910. G. H. Marsh, Clerk, U. S. Circuit Court District of Oregon. [138]

And afterwards, to wit, on Monday, the 18th day of April, 1910, the same being the 7th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding,—the following proceedings were had in said cause, to wit: [139]

[**Order of Submission of Motion for Leave to Amend Bill.**]

(Title of Court and Cause.)

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants

Nils O. Werner, Charles A. Smith and Linn & Lane Timber Company by Mr. John Lind, Mr. A. Ueland and Mr. John M. Gearin, of counsel; defendant Frederick A. Kribs, by Mr. A. H. Tanner, of counsel; defendants Thomas Wilson, Charles Barr, Neal D. Dozier, Edward Finley, Zebulin Smith, J. S. Phillips, Benjamin F. Kirk, and Elam Miller, by Mr. Louis H. Tarpley, of counsel; defendants James B. Cooley, Henry Blakely, Jacob W. Stillwell, John Harrison and Hugh Blakely, by Mr. W. W. Banks, of counsel: Whereupon, said plaintiff moves the Court for leave to amend its bill of complaint herein. And the Court having heard the arguments of Mr. John McCourt, United States Attorney, and of Mr. A. Ueland and Mr. John Lind, of counsel for defendants, will advise thereof. [140]

[Minutes—April 19, 1910—Hearing.]

And afterwards, to wit, on Tuesday the 19th day of April, 1910, the same being the 8th judicial day of the regular April, 1910, term of said court,—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding,—the following proceedings were had in said cause, to wit: [141]

[Order Allowing Pro Forma Motion to Amend Bill.]

(Title of Court and Cause.)

This cause was heard upon the motion of the plaintiff to amend its bill of complaint herein, and was argued by Mr. John McCourt, United States Attorney, and by Mr. A. Ueland and Mr. John Lind, of counsel for defendants; upon consideration whereof
IT IS NOW HERE ORDERED AND AD-

JUDGED that said motion be, and the same is hereby, allowed *pro forma*, reserving said motion for further consideration at the termination of the evidence upon the final hearing of this cause as the Court shall determine.

And thereupon this cause comes on for final hearing upon the pleadings and the proofs, and the Court having heard the evidence now offered, and the hour of adjournment having arrived, the further hearing of this cause is continued until tomorrow, April 20, 1910. [142]

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court an Amendment to Bill of Complaint, in words and figures as follows, to wit: [143]

[Amendment of Bill (Filed April 22, 1910).]

(Title of Court and Cause.)

Comes now the United States of America by John McCourt, United States Attorney for the District of Oregon and by leave of the Court first had and obtained, amends its bill of complaint herein by adding a paragraph thereto designated as paragraph No. 13 $\frac{1}{2}$ and therein alleges as follows:

13 $\frac{1}{2}$.

That at the time of the issuance of the said patents to and for said *ands* as aforesaid, the same were of the reasonable value of Two Hundred Twenty-five Thousand (\$225,000.00) Dollars and said lands are now of the reasonable value of Four Hundred Thousand (\$400,000.00) Dollars and by reason of the fraudulent practices and representations of the de-

defendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged complainant was and is damaged in a sum of money equal to the full value of said lands, and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed.

Dated at Portland, Oregon, this 21st day of April, 1910.

JOHN McCOURT,
United States Attorney.

Filed April 22, 1910. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [144]

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court an Answer to Amendment to Bill of Complaint, in words and figures as follows, to wit: [145]

[Joint and Several Answer of Linn and Lane Timber Co. et al. to Amendment of Bill.]

(Title of Court and Cause.)

The joint and several answer of Linn and Lane Timber Company, Charles A. Smith and Frederick A. Kribs, to the matter contained in the amendment to the bill of complaint filed April 21, 1910:

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said amendment contained, and hereby expressly saving and reserving an excep-

tion to the order permitting said amendment to be made, severally answering the averments in said amendment contained say as follows:

1. These defendants, respectively, deny that the value of the land described in the amended bill of complaint, at the time of the issuance of the patents therein described, or at any time prior thereto, was the sum of two hundred twenty-five thousand dollars, or any other or greater sum than twenty-four [146] thousand seven hundred and fifty-two dollars; and these defendants, respectively, deny that said lands are now of the reasonable value of four hundred thousand dollars, or of any other or greater value than forty-four thousand eight hundred dollars, and these defendants respectively deny that the complainant is, or has ever been, damaged in any sum or amount whatsoever by reason of the issuance of said patents, or any of them, or by reason of any matter or things whatsoever in said bill contained; and these defendants respectively deny that the complainant is, or will be, entitled to recover any sum or amount whatsoever against either or any of these defendants.

2. These defendants, respectively, by leave of court first obtained, further answering the bill of complaint, say that soon after said entries were made, information was lodged in complainant's Department of the Interior, charging that all said entries were fraudulent and void; that an order was thereupon made by said Department directing patents not to issue on said entries; that said Department thereupon instituted and for a period of more than two years carried on an examination of all matters pertaining to the alleged frauds in said entries; that

much evidence was adduced in said examination, and in and by said examination and evidence the matters and things in the amended bill complained of were brought before the Secretary of said Department for his decision; that being fully informed in the premises said Secretary thereupon in and by Department Letter L. R. R. Div. 932-1902, dated May 17th, 1902, and directed to the Commissioner of the General Land Office decided and determined that all said entries were lawfully made and valid and that patents should be issued on the same, that said patents were [147] thereupon issued, and the same are the patents described in the bill of complaint. And these defendants respectively say that all said matters having been so examined, heard and decided by complainant's said Secretary of the Interior, complainant is and ought to be barred from maintaining its said bill of complaint in this court and that said bill should be dismissed.

LINN ANS LANE TIMBER COMPANY.

CHARLES A. SMITH,

By A. UELAND,

Their Attorney.

JOHN LIND,

A. UELAND,

W. M. JEROME,

JNO. M. GEARIN,

Of Counsel for said Defendants.

FREDERICK A. KRIBS,

By ALBERT H. TANNER,

Attorney and Counsel for said Frederick A. Kribs.

Filed April 22, 1910. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [148]

And afterwards, to wit, on Tuesday, the 3d day of May, 1910, the same being the 20th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [149]

[Order Appointing Special Examiner, etc.]

(Title of Court and Cause.)

Now, on this day comes the complainant by Mr. John McCourt, the United States Attorney for the District of Oregon, and the defendants, The Linn and Lane Timber Company and Charles A. Smith, by Mr. John Lind, Mr. A. Ueland and Mr. John M. Gearin, their counsel, and defendant, Frederick A. Kribs, by Mr. A. H. Tanner, his counsel, and thereupon said defendants moved the court for an order appointing some qualified person at the City of Minneapolis, in the State of Minnesota, to act as Examiner of this Court to take orally such testimony and evidence as the parties hereto decide to be taken at said City of Minneapolis.

It is therefore ORDERED that Mr. George F. Hitchcock, Jr., of Minneapolis, Minnesota, be, and he is hereby, appointed as Special Examiner of this Court with power and authority to take and transmit to this Court such depositions and testimony in this [150] cause as the parties hereto decide to be taken at said City of Minneapolis, and at such time between the first and tenth days of June, 1910, as may suit the convenience of said Examiner and of the parties hereto; and that said Examiner extend said testimony

when so taken and report the same to this Court with all convenient speed, said testimony when so taken to be used upon the trial of this cause.

Dated May 3, 1910.

R. S. BEAN.

Judge.

Filed May 3, 1910. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. [151]

And afterwards, to wit, on Thursday, the 5th day of May, 1910, the same being the 22d judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause to wit: [152]

[Order Re Taking of Evidence, etc.]

(Title of Court and Cause.)

The complainant, by Mr. John McCourt, the United States Attorney for the District of Oregon, and defendants, the Linn and Lane Timber Company, and Charles A. Smith, by Mr. John Lind, Mr. A. Ueland, and Mr. John M. Gearin, their counsel, appearing in open court and consenting thereto, it is ordered:

1. That the time of the complainant for the taking of its evidence in chief in this cause, be, and the same hereby is, closed, the same having been taken orally before the Court, except that the complainant, if it be so advised, may take as its evidence in chief the testimony of Charles L. Trabert between the first and tenth days of June, 1910, at Minneapolis, Minne-

sota, before George F. Hitchcock, Jr., Special Examiner, appointed such by order of this court, entered in this cause May 3, 1910.

2. That the time of the defendants for taking their evidence in this cause be, and the same is, hereby limited to and including the tenth day of June, 1910, unless such time be extended by stipulation in writing between counsel in the case.

3. That complainant have until June 25, 1910, to take such evidence in rebuttal in this cause as it may be advised.

4. That the Clerk of this Court be, and is hereby, directed to transmit to George F. Hitchcock, Jr., at his office in the Federal Building in the City of Minneapolis, State of Minnesota, [153] before May 20, 1910, the documents introduced as evidence in this cause marked United States Exhibits Numbers respectively 155 to 161, both inclusive, for the purpose of having the same used in the taking of the evidence for the defendants in this cause before said George F. Hitchcock, Jr., as Special Examiner heretofore appointed for that purpose.

Dated May 5, 1910.

R. S. BEAN,
Judge.

Filed May 5, 1910. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [154]

And afterwards, to wit, on Wednesday, the 27th day of July, 1910, the same being the 91st judicial day of the regular April, 1910, term of said court —Present, the Honorable ROBERT S. BEAN,

United States District Judge presiding—the following proceedings were had in said cause, to wit: [155]

[**Minutes—July 27, 1910—Hearing.**]

(Title of Court and Cause.)

[**Order Allowing Filing of Amendment to Amended Bill, etc.**]

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants Nils O. Werner, C. A. Smith and Linn & Lane Timber Company, by Mr. John Lind and Mr. John M. Gearin, of counsel, and defendant Frederick A. Kribs, by Mr. Albert H. Tanner, of counsel: Whereupon, the final hearing of this cause is resumed. And the Court having heard the arguments of counsel, will advise thereof. Whereupon, IT IS ORDERED that said plaintiff be, and it is hereby, allowed ten days from this date within which to file a brief herein, and IT IS ORDERED that the plaintiff be, and it is hereby, allowed to file an amendment to its amended bill of complaint herein. [156]



And afterwards, to wit, on the 6th day of August, 1910, there was duly filed in said court, an Amendment to Bill of Complaint, in words and figures as follows, to wit: [157]

[**Amendment (Filed August 6, 1910) of Paragraph XIII of Bill.**]

(Title of Court and Cause.)

Now comes John McCourt, United States Attorney for the District of Oregon, and by leave of Court first had and obtained in the above-entitled cause, hereby

amends paragraph XIII of the bill of complaint herein to read as follows:

XIII.

And your orator further shows unto your Honors and alleges, that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the president of the United States, had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents, and by the exercise of reasonable diligence could not have discovered these facts any sooner; that after certificates upon final proof were issued by the United States Land Office at Roseburg, Oregon, as hereinbefore set forth, and during the years 1900, 1901 and 1902, and prior to the issuance of patents as hereinbefore [158] set forth for the lands hereinbefore described, the defendants Frederick A. Kribs, C. A. Smith, Stephen A. D. Puter, and other persons acting for them and in their behalf, secured the respective entrymen and entrywomen hereinbefore named each to execute and subscribe affidavits and depositions in which it was falsely set forth and represented, in effect, to complainant that each of said entrymen and entrywomen respectively had entered the land in good faith, to appropriate it to his or her own exclusive use and benefit, and that he or she had not, prior to making said entry, directly or indirectly

made any agreement in any way or manner, with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, and that he or she did not apply to purchase the land included in the respective entries on speculation; and thereby, and by means of said false and fraudulent final proofs as hereinbefore set forth made by the said entrymen and entrywomen respectively, and by means of affidavits of like tenor and effect subscribed and executed by the defendants Frederick A. Kribs, Stephen A. D. Puter, and other persons secured by them to make like affidavits, all of which were filed in the General Land Office of the United States prior to the issuance of said patents, issuance of said patents was procured and said false and fraudulent representations were concealed from the complainant and complainant did not ascertain that a gross fraud had been perpetrated upon it, or that said representations of said entrymen and entrywomen, and of and in behalf of said defendants who were not entrymen, were false and fraudulent and untrue, until January, 1905, at which time complainant was conducting a vigorous investigation of charges of violations of the Public Land laws in Portland, Oregon, when [159] a large number of said entrymen and entrywomen, together with the defendants Frederick A. Kribs and Stephen A. D. Puter, and also other persons who had acted with them in the transactions hereinbefore set forth, disclosed to complainant that the Timber and Stone land entries hereinbefore set forth and described were false and fraudulent as here-

inbefore set forth; that prior to said January, 1905, complainant had no means or opportunity of ascertaining the false and fraudulent representations that had been made to it relative to said Timber and Stone land entries hereinbefore set forth, and of the fraud that had been perpetrated upon it relative thereto, by reason of the concealment of said fraud by the defendants as aforesaid.

The foregoing amendment is submitted in the above form by consent of opposing counsel who do not require that a new formal amended bill of complaint be filed.

JOHN McCOURT.

United States Attorney for Oregon.

Amendment to bill of complaint. Filed Aug. 6, 1910. G. H. Marsh, Clerk. [160]

And afterwards, to wit, on Thursday, the 20th day of October, 1910, the same being the 16th judicial day of the regular October, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [161]

(Title of Court and Cause.)

Decree.

Now, on this 20th day of October, this cause coming on for a final decree therein and it appearing to the Court that said cause was heretofore heard and tried before the Court on the pleadings of the respective parties therein and that upon said hearing and trial the complainant and the defendants introduced

testimony and evidence in support of their respective contentions, and thereafter said cause was argued and submitted to the Court and the same was taken under advisement, and the Court being now fully advised,

IT IS ORDERED, ADJUDGED AND DECREED that those certain patents issued by complainant and bearing date the 12th day of August, 1902, and purporting to convey the lands hereinafter described to the persons hereinafter mentioned, are hereby [162] declared to be void, and the same are hereby cancelled, annulled and set aside, that is to say, the patents issued to the following persons purporting to convey to them the lands described respectively as follows, to wit:

SADIE E. PUTER—Northeast Quarter (NE. $\frac{1}{4}$) of Section Twenty (20), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

Mrs. ELVIRA JACOBS—Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-two (22), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

H. C. BARR—Southeast Quarter (SE. $\frac{1}{4}$) of Section Twenty-four (24), Township Fourteen (14) South, Range Two (2) East of the Willamette Meridian.

S. A. D. PUTER—Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty (20), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOHN J. JAGGY—Southeast Quarter (SE. $\frac{1}{4}$) of Section Thirty-four (34), Township Fourteen

(14) South, Range Three (3) East of the Willamette Meridian.

NEAL D. DOZIER—Southwest Quarter (SW. $\frac{1}{4}$) of Section Thirty-four (34), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

ZEBULIN SMITH—Northwest Quarter (NW. $\frac{1}{4}$) of Section Thirty-four (34), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

THOMAS WILSON—Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-eight (28), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOHN L. GREEN—Northwest Quarter (NW. $\frac{1}{4}$) of Section Thirty-five (35), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

J. S. PHILLIPS—Northeast Quarter (NE. $\frac{1}{4}$) of Section Thirty-four (34), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

CHARLES BURLEY—Southeast Quarter (SE. $\frac{1}{4}$) of Section Thirty-five (35), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

CHARLES BARR—Southwest Quarter (SW. $\frac{1}{4}$) of Section Thirty-five (35), Township Fourteen (14), South Range Three (3), East of the Willamette Meridian.

EDWARD FINLEY—Northeast Quarter (NE. $\frac{1}{4}$) of Section Thirty-five (35), Township Fourteen

(14) South, Range Three (3), East of the Willamette Meridian. [163]

DOUGLAS ADKINSON — Southwest Quarter (SW. $\frac{1}{4}$) of Section Twenty-four (24), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

HARRY SALTMARSH — Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-four (24), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

JENNIE MOULTON — East Half of West Half (E. $\frac{1}{2}$ W. $\frac{1}{2}$) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

LUELLA BEEMAN — Lot Four (4), and the South Half of the Southeast Quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section Thirty-one (31), and Southwest Quarter of Southwest Quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

GEORGE L. THOMPSON — Northwest Quarter (NW. $\frac{1}{4}$) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

ISAAC R. BORUM — Southwest Quarter (SW. $\frac{1}{4}$) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

BENJAMIN F. KIRK — Northeast Quarter (NE. $\frac{1}{4}$) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

HUGH BLAKELY—Lot Four (4), and the South half of Southeast Quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section Thirty (30), and the Southwest Quarter of Southwest Quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

JAMES B. COOLEY—Lot Three (3) and the North Half of the Southeast Quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section Thirty-one (31), and the Northwest Quarter of the Southwest Quarter (NW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4), East of the Willamette Meridian.

FRANK W. BURFORD—Lot Two (2) and the South Half of the Northeast Quarter (S. $\frac{1}{2}$ NE. $\frac{1}{4}$) of Section Thirty-one (31), and the Southwest Quarter of the Northwest Quarter (SW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4), East of the Willamette Meridian.

JOHN HARRISON—Lot One (1), and the North Half of the Northeast Quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$) of Section Thirty (30), and Northwest Quarter of Northwest Quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

HENRY B. BLAKELY—Lot Three (3) and the North Half of the Southeast Quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section Thirty (30) and the Northwest Quarter of Southwest Quarter (NW. $\frac{1}{4}$ SW. $\frac{1}{4}$) of Section Twenty-nine (29), Township Fourteen (14) South,

Range Four (4), East of the Willamette Meridian.
[164]

PETER BUFFINGTON — Southeast Quarter (SE. $\frac{1}{4}$) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JACOB W. STILLWELL—Lot One (1) and the North Half of the Northeast Quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$) of Section Thirty-one (31); the Northwest Quarter of the Northwest Quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

ELAM MILLER—Northeast Quarter (NE. $\frac{1}{4}$) of Section Thirty-one (31), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all deeds and conveyances of said lands above described, or any of them, made and executed by the defendants or any of them, and particularly mentioned and described in the bill of complaint herein, be and they are each and all hereby declared to be in fraud and violation of and subject to the rights of complainant and are hereby cancelled, annulled and set aside, and said defendants and each and all of them and their agents, servants and employees, are hereby enjoined and restrained from asserting, exercising or exerting any authority or control over said lands or any of them or over or in relation to the title to said lands or any part thereof by virtue of said deeds and conveyances

or any of them or otherwise; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the lands hereinbefore described, be and the same are hereby declared to be the property of complainant in fee simple, divested of all right, title or estate in law or equity claimed or asserted by defendants or either or any of them, and particularly the defendants C. A. Smith and the Linn and Lane Timber Company, and the said complainant is entitled to the immediate possession of all of said lands; and

IT IS FURTHER ORDERED that the application of complainant made prior to the hearing and trial of this [165] cause to amend the Bill of Complaint herein by adding thereto paragraph 13 $\frac{1}{2}$ as follows:

“That at the time of the issuance of the said patents to and for said lands as aforesaid, the same were of the reasonable value of Two Hundred Twenty-five Thousand (\$225,000.00) Dollars and said lands are now of the reasonable value of Four Hundred Thousand (\$400,000.00) Dollars, and by reason of the fraudulent practices and representations of the defendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged, complainant was and is damaged in a sum of money equal to the full value of said lands and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed,” be and the same is hereby denied.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that complainant recover of and from the defendants its costs and disbursements herein taxed and allowed at \$1361.65.

Done and dated in open Court at Portland, Oregon, this 20th day of October, 1910.

R. S. BEAN,
Judge.

Decree. Filed October 20, 1910. G. H. Marsh,
Clerk. [166]

[Testimony and Exhibits Taken and Introduced Before the Court.]

And, to wit, on the 9th day of August, 1910, there was duly filed in said court testimony and exhibits taken in open court, in words and figures as follows, to wit: [167]

(Title of Court and Cause.)

JOHN McCOURT, U. S. Attorney, for Government.

A. H. TANNER, Attorney for Defendant Kribs.
W. W. BANKS, Attorney for Defendants
Cooley, Blakely, et al.

L. H. TARPLEY, Attorney for Defendants
Wilson, et al.

DOLPH, MALLORY, SIMON & GEARIN, and
UELAND, LIND & JEROME, Attorneys for
Defendants Smith and Werner.

R. S. BEAN, District Judge. [168]

[Proceedings had at] Portland, Oregon, April 19,
1910, at 10 A. M.

COURT.—For the purpose of taking testimony in this case I will sustain the motion of the Government in regard to amending the pleadings, and permit the filing of the proposed amendments to the bill and the testimony which may be offered in support thereof, leaving the ultimate questions of its materiality and pertinence to the present controversy to be determined at the final hearing.

Mr. UELAND.—The defendants will save an exception to the ruling, and if it meets with the approval of the Court and District Attorney, we would like, in order to have the record in good form, to have the amendment filed separately instead of being interpolated in the bill, so that the answer would be made as merely an answer to the amendment without filing a new answer entirely.

COURT.—I think that will be satisfactory.

Mr. McCOURT.—I presume it will be understood that at the final argument, if there are any additional authorities or arguments we desire to make upon the questions involved it may be done at the final argument.

Mr. UELAND.—There is another matter I would like to bring to the attention of the Court. We are informed by Senator Gearin, our associate, that there was an understanding with the District Attorney, that such evidence as could be taken in open court, but if the testimony of the Government should disclose that the defendants would need testimony of

persons in the east, we would have an opportunity to take that before an Examiner to be appointed before the case is submitted.

Mr. McCOURT.—I do understand. It was understood by Senator Gearin and myself that both the defense and the Government would probably be required under the circumstances in [*169—†1] the case to take some depositions. Wherever that might be necessary it is understood that we might agree upon proper parties.

Mr. GEARIN.—We will take all the testimony now that we have.

Mr. McCOURT.—In that connection I wish to state to the Court that an important witness of the Government whom I expected to have here and in fact whose evidence is largely responsible for the bringing of this case, is not here, namely, S. A. D. Puter, a man of whom your Honor has heard of from time to time in connections of this character. The subpoenas were issued some two months ago and placed in the hands of the Marshal for service. About a month ago Puter came in from the East or from somewhere; the attention of the Marshal was directed to his presence in the city, but for some reason he was not served. I understood until yesterday that he had been served, but the Marshal tells me that he called him up by phone and he promised to come and get his subpoena. Instead of that he goes East a day or so later, and was not served. I received a telegram from him in Scranton, Pennsyl-

[*Page number appearing at foot of page of original certified record.]

[†Original page-number of Testimony appearing at foot of page of testimony in original certified record.]

vania, on Sunday, or rather from his physician, stating that Mr. Puter had just been operated on in a hospital at Scranton. I had the United States Marshal there go and investigate the matter and found Mr. Puter was operated on last Friday for an abscess in the ear and will not be able to travel for a week or ten days. It may be we will have to include him among the witnesses whose testimony shall be taken by depositions.

We have the original records of the Land Office here in relation to these cases—sworn statements, proofs, etc. I wonder if we could just introduce them—have them admitted as original records to save time.

Mr. LIND.—What case?

Mr. McCOURT.—3320. [170—2]

Mr. UELAND.—As to that I will only call attention to this. There is no difference as to that part of the bill; as to who made the entries, the nature of the entries, the time of the entries, and so on. I would suggest that it is unnecessary to encumber the record with copies of them.

Mr. McCOURT.—We deem it necessary to introduce them for the purpose of showing the nature of the transaction and the connected steps in it; the association of the different people with this transaction; the dates of the filings and the fact that they were filed in groups together, showing their relation one to another; the relation of the witnesses to each other and to these several cases; showing the connected steps in the transaction.

COURT.—Very well.

Mr. McCOURT.—I will endeavor to put in the evidence I have in No. 3320 before proceeding on another one. The facts are different in the different cases and it will be difficult to try them together.

Mr. UELAND.—The defendants for whom we appear desire to enter an objection to the introduction of any testimony in this case and they introduced that objection separately on the ground that it appears in the case of the amended bill of complaint that suit is barred by the Act of March 3, 1891.

Objection overruled. Exception saved.

[Certain Offers in Evidence, etc.]

Mr. McCOURT.—I offer in evidence the application and affidavits of the entry of Douglas Adkison, for the SW. $\frac{1}{4}$ of section 24, T. 14 S. R. 3 E., bearing date the first day of February, 1900.

COURT.—Are you offering these by reference to the [171—3] townships, I mean offering in their order?

Mr. McCOURT.—All of the land included in the suit.

COURT.—I mean in the township.

Mr. McCOURT.—No. I was taking them up as they come, alphabetically. This is township 14 south, range 3 east. These papers include the timber and stone sworn statement—

Mr. LIND.—Is it your intention to offer the whole file?

Mr. McCOURT.—Yes, a whole file, and I will mention what papers are in them in the first ones and then I will say similar papers in the others, because *there* papers are practically identical. They include

Timber and Stone Sworn Statement, also affidavit showing excuse for continuance of proof from the 12th day of April until the 18th day, the non-mineral affidavit made at the time of proof, testimony of claimant and witness upon final proof, notice by the Register of publication, cross-examination of the claimant by a Special Agent, letter from the Commissioner of the General Land Office July 1st, 1902, proof of publication, final receipt for the payment of money, and final certificate.

Marked "U. S. Exhibit 1."

Mr. BANKS.—The defendants that I represent would like to have it understood by the District Attorney that the same objections and exceptions which apply to the defendants which the other attorneys represent shall be had by mine.

Mr. KELLY.—The same for my defendants.

[172—4]

Mr. TANNER.—I wish to enter an appearance for Mr. Kribs.

Mr. LIND.—No objection to the evidence.

Mr. McCOURT.—I also offer in connection with the Douglas Adkinson entry what is designated as "Report of fraudulent claim or entry" by Special Agent E. D. Stratford.

Mr. LIND.—I will ask the District Attorney whether that was taken—whether that document was prepared—whether the data which it contains was taken at the time of final proof or whether it was taken *ex parte*, afterwards, by some Special Agent of the government.

Mr. McCOURT.—Ordinarily it is taken *ex parte*.

I think the evidence will show in this case it was not. It may be said, however, to have been taken *ex parte*.

Mr. LIND.—The *ex parte* opinion of the Special Agent, would not be evidence of either fraud or good faith, not taken in pursuance of the statutory proceedings, like final proof at the Land Office.

COURT.—What do you claim for it?

Mr. McCOURT.—They are offered in connection with the entries and will be elucidated by facts later for the purpose of showing the continued effort upon the part of the entrymen and upon the parties sharged as defendants, or most of them, of the original scheme to defraud the government out of its land.

COURT.—You expect to supplement it by additional testimony?

Mr. McCOURT.—Yes, showing the circumstances under which made, who furnished the facts which are contained in the [173—5] Affidavits and under what circumstances the agent was prevailed upon to present to the Government the facts contained, or purporting to be contained, in the affidavits.

Mr. LIND.—Will the Court grant me a moment? This is new to me and I want to look at it. All the defendants severally object to the admission in evidence of the documents offered for the reason that it is mere hearsay, and *ex parte*, not taken in any judicial or other proceedings sanctioned by statute to which we were a party so as to be bound by it—the alleged report.

COURT.—The objection will be overruled on the statement of the District Attorney that he will make it material by additional testimony, otherwise it will be stricken out.

Mr. McCOURT.—In addition to the reasons given, it is a part of the record upon which the patents in question were based.

COURT.—No statement of a Special Agent will be binding upon the parties unless bound otherwise.

Mr. McCOURT.—It contains affidavits of the patentee along with it.

Marked “U. S. Exhibit 2.”

Mr. McCOURT.—We offer the papers in connection with the entry of Charles Barr for the southwest quarter of section 35, township 14 south, range 3 east, the original papers contained in his said entry, and containing documents similar to those in the Adkinson entry, his Timber and Stone Statement is dated January 31, 1900.

Marked “U. S. Exhibit 3.”

Mr. McCOURT.—In connection with the entry of Charles [174—6] Barr we offer in evidence a similar report of fraudulent claim or entry to that in the Douglas Adkinson entry. I should state in connection with these reports of fraudulent claim or entry, as they are designated, that they contain affidavits by the claimant himself in each case, affidavit or purported affidavit of Frederick A. Kribs, and the affidavits of Horace G. McKinley, Dan W. Tarpley, and W. J. Drinkard.

COURT.—Are those people parties to this suit?

Mr. McCOURT.—Mr. Puter and Mr. Kribs are and Tarpley and McKinley will be connected with it by testimony. Also the affidavit of S. A. D. Puter in each case. The affidavits of all but the claimants in each case, with the exception of Ira Pilkington, being printed, the affidavits of Kribs and the others, except

the claimants, being identical in each claim or entry.

Mr. LIND.—Those are objected to for the same reasons as stated in objection to Exhibit 2.

COURT.—You may consider that objection as applying through the entire offer.

Marked “U. S. Exhibit 4.”

Mr. McCOURT.—We offer the original entry papers in the entry of H. C. Barr, covering the southeast quarter of section 24, township 14 south, range 2 east, Timber and Stone Sworn Statement dated January 19, 1900. This record contains papers identical with, or practically identical with the entry papers heretofore offered.

Marked “U. S. Exhibit 5.”

Mr. McCOURT.—I offer in evidence, *with* connection with the last entry the report of fraudulent claim or entry, [175—7] containing affidavits as indicated in the other cases.

Marked “U. S. Exhibit 6.”

Mr. McCOURT.—I offer in evidence the original entry papers of Mrs. Luella Beeman, covering lot 4, and the south half of the southeast quarter of section 31, and the southwest quarter of the southwest quarter of section 32, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, this record containing similar papers to those heretofore introduced.

Marked “U. S. Exhibit 7.”

Mr. McCOURT.—In this latter connection I offer in evidence report of fraudulent claim or entry as before indicated touching this claim.

Marked “U. S. Exhibit 8.”

Mr. McCOURT.—I offer the original entry papers

in the entry of Henry B. Blakeley, covering lot 3, the north half of the southeast quarter of section 30, and the northwest quarter of the southwest quarter of section 29, township 14 south, range 4 east, his Timber and Stone Sworn Statement being dated February 26, 1900, and containing similar papers to those before mentioned.

Marked "U. S. Exhibit 9."

Mr. McCOURT.—I offer in evidence, in the latter connection, report of fraudulent claim or entry, containing affidavits as above indicated.

Marked "U. S. Exhibit 10."

Mr. McCOURT.—I offer in evidence the original entry papers of Hugh Blakeley, covering lot 4, the east half of the southeast quarter of section 30, and the southwest [176—8] quarter of the southwest quarter of section 29, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked "U. S. Exhibit 11."

Mr. McCOURT.—In connection with the last mentioned entry I offer the report of fraudulent claim or entry, being the same as those heretofore introduced, with the exception that there is no affidavit upon the part of the claimant contained in the report.

Marked "U. S. Exhibit 12."

Mr. LIND.—May I be permitted to ask the District Attorney at this time whether he intends to follow up this proof by putting in evidence all the filed of the General Land Office and the Interior Department relating to the investigation upon these entries and final decisions resulting in the issuance of patents?

Mr. McCOURT.—I think so. I do not intend to follow it just immediately following the offer of these, but before I close the case I will offer all of that record I have. There may be a few items I have not been able to secure.

Mr. LIND.—Might it not be well, if it is the purpose of the District Attorney to put in evidence all the papers in possession of the Government relative to these claims respectively, to put them in at this time, so that we may have an opportunity—some of these papers, for instance, the letter which I referred to the other day, we are familiar with, but most of these papers we have not seen, and if they were all offered and received in evidence at this time they will enable us to examine them and take such steps in connection with them as we deem advisable [177—9] and we will save a great deal of time and it will have a distinct advantage, your Honor, of keeping each tract separate and distinct as we go along.

COURT.—I think it will be well to offer them all in order, if you can.

Mr. McCOURT.—I intend to facilitate the matter as much as possible, but, for instance, there are some few documents, if offered at this time, say a letter, without evidence supplementing it, will enable the counsel to raise some legal question and perpetrate an argument upon the Court here, which I want to postpone as much as possible.

Mr. LIND.—I assure counsel and the Court that we are a good ways from home and we do not want to consume time unnecessarily.

COURT.—Offer them as near in their order as you can.

Mr. McCOURT.—I will do that. I want to put the matter as fully before the Court as I can and get the position of the Land Department before the Court, so that counsel may take advantage of it, if they see fit, and they indicate by pleadings that they intend to. There is certainly no advantage in the Government trying to confuse this matter, for we have to make it plain or we cannot prevail. I will follow the suggestion of counsel as far as I can, so as to enable you to perfect your defense. When I get a little farther down the line I may have to ask you to produce some papers and letters, or, rather, have to ask you to see some that I have asked you to produce.

Mr. LIND.—Anything that we have is at your disposal. [178—10]

Mr. McCOURT.—We offer the original entry papers of Isaac R. Borum, covering the southwest quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900. This record contains substantially the same papers as in the former entry papers offered.

Marked “U. S. Exhibit 13.”

Mr. McCOURT.—There is no report of fraudulent claim apparently, in regard to that case. There may have been one, but we have not been able to find it.

I now offer in evidence the original entry of Peter Buffington, covering the southeast quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked “U. S. Exhibit 14.”

Mr. McCOURT.—In connection with the latter

entry, I offer the report of fraudulent claim or entry, containing the affidavit of the claimant, the other affidavits being like the affidavits in the former reports offered.

Marked "U. S. Exhibit 15."

Mr. McCOURT.—I offer the original entry papers of Frank W. Burford, covering lot 2, the south half of the northeast quarter of section 31, and the southwest quarter of the northwest quarter of section 32, in township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked "U. S. Exhibit 16."

Mr. UELAND.—Is that covered by your bill?

Mr. McCOURT.—Yes, I think it is. That entry and like ones are offered in connection with other entries to show the relationship—that is, to show similar transactions. [179—11] As a matter of fact, there were fifty-seven entries made under similar conditions, by these same parties. The Northern Pacific Railroad Company got into the field and filed a contest against them, and twenty-four of the claims were abandoned, or relinquished, rather, to the Northern Pacific, and these parties took the other thirty-three. They were all made under similar circumstances.

COURT.—You claim the same fraudulent transaction?

Mr. McCOURT.—Yes, connected with the same matter.

In connection with the last mentioned entry I offer the report of fraudulent claim or entry, which, however, does not contain any affidavit of the claimant,

the affidavits of the other parties mentioned being contained therein.

Marked "U. S. Exhibit 17."

Mr. McCOURT.—I now offer in evidence the entry of Charles Burley, covering the southeast quarter of section 35, township 14 south, of range 3 east, the Timber and Stone Sworn Statement being dated January 31, 1900. This record contains substantially the same entry papers as those heretofore offered.

Marked "U. S. Exhibit 18."

Mr. McCOURT.—In connection with the latter entry I offer the report of fraudulent claim or entry, containing the affidavit of the claimant, as well as of the other parties heretofore mentioned.

Marked "U. S. Exhibit 19."

Mr. McCOURT.—I offer in evidence the original entry papers of James B. Cooley, covering lot 3, the north half [180—12] of the southeast quarter of section 31, and the northwest quarter of the southwest quarter of section 32, township 14 south, of range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, and the record containing the usual documents.

Marked "U. S. Exhibit 20."

Mr. McCOURT.—In connection with the entry of James B. Cooley I offer the report of fraudulent claim or entry, showing the affidavit of the claimant, as well as of the other parties heretofore mentioned.

Marked "U. S. Exhibit 21."

Mr. McCOURT.—We offer in evidence the original entry papers of Neal D. Dozier, covering the southwest quarter of section 34, township 14 south,

range 3 east, the Timber and Stone Sworn Statement being dated January 20, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 22."

Mr. McCOURT.—In connection with the entry of Neal D. Dozier we offer the report of fraudulent claim or entry, which does not contain the affidavit of claimant, but of the other parties heretofore mentioned.

Marked "U. S. Exhibit 23."

Mr. McCOURT.—I offer the original entry papers of Edward Finley, for the northeast quarter of section 35, township 14 south, range 3 east, the Timber and Stone Sworn Statement bearing date January 31, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 24."

Mr. McCOURT.—I offer in evidence the original entry papers of John L Green, covering the northwest quarter [181—13] of section 35, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 31, 1900, the record containing the usual papers, and in addition thereto a letter of July 22, 1904, to A. R. Greene from the Register of the Roseburg Land Office, and a letter of J. H. Fimple, Acting Commissioner, to A. R. Greene, Special Inspector of the Interior Department, dated August 14, 1904.

Mr. LIND.—Those two letters objected to for the reasons stated in objection to Exhibit No. 2.

Objection overruled, exception saved.

Mr. UELAND.—And they are subsequent to the patents, two years.

Mr. McCOURT.—They are not material. You can look at them. I do not care anything about them, but do not want to separate them from the record. They really have no bearing.

Mr. UELAND.—Make the offer except those two letters, so they are not included in the offer.

Mr. LIND.—They are utterly immaterial, your Honor.

COURT.—The record will be admitted, excepting those two letters.

Marked “U. S. Exhibit 25.”

Two letters in question marked “Not in Evidence.”

Mr. McCOURT.—In connection with the entry of John L. Green we offer the report of fraudulent claim or entry, including the affidavit of claimant. I notice an envelope addressed to John L. Green attached to the foregoing report. We do not offer that.

Marked “U. S. Exhibit 26.” [182—14]

Mr. LIND.—Are there any private letters embraced in that?

Mr. McCOURT.—No, just the notice of issuance of patent.

We offer the original papers of John Harrison, covering lot 1, the north half of the northeast quarter of section 30, and the northwest quarter of the northwest quarter of section 29, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the record containing the usual papers.

Marked “U. S. Exhibit 27.”

Mr. McCOURT.—In connection with the entry of

John Harrison we offer the report of fraudulent claim or entry, containing the affidavits heretofore mentioned, together with that of claimant.

Marked "U. S. Exhibit 28."

Mr. McCOURT.—We offer the original entry papers of Elvira S. Jacobs, covering the northwest quarter of section 22, in township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 19, 1900, the record containing the usual papers.

Marked "U. S. Exhibit 29."

Mr. McCOURT.—In connection with the entry of Elvira Jacobs we offer report of fraudulent claim or entry, containing the usual affidavits, including that of the claimant, whose name, however, appears in this affidavit and purports to be Elaine S. Jacobs.

Mr. LIND.—Is it the same entry?

Mr. McCOURT.—Yes, the same entry.

Mr. LIND.—I would not call any attention to it.

Marked "U. S. Exhibit 30." [183—15]

Mr. McCOURT.—I offer in evidence the original entry papers of John J. Jaggy, covering the south-east quarter of section 34, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 20, 1900, the record containing the usual instruments.

Marked "U. S. Exhibit 31."

Mr. LIND.—John J. Jaggy is not a party to the bill. It appears that he is dead and his representatives have not been made parties. Would it not be proper and simpler to dismiss as against him? If not, we shall object to it on the ground that it appears in the proceedings that this party is dead and there

has been no legal representative.

COURT.—Is he a party to the bill?

Mr. LIND.—To the bill originally, was he not?

Mr. McCOURT.—In the original bill he was included as a party and it was discovered in the meantime that he was dead. When the amended bill was filed they left him out but included the land. The fact is established that it is not necessary to make the entryman parties. They have parted with their interests.

COURT.—The land is included in this controversy?

Mr. McCOURT.—The land is included in the suit, but the title had entirely passed out from Jaggy long before he died.

COURT.—He is not a party mentioned in the bill?

Mr. LIND.—With reference to this tract, it is objected on the part of the defendants, separately, that no suit can be maintained for a vacation of these patents unless the entryman or his legal representative be made a party [184—16] to the action.

Objection overruled, exception saved.

Mr. McCOURT.—We offer, in connection with the entry of John J. Jaggy, report of fraudulent claim or entry, containing the affidavit of the claimant, as well as of the other persons heretofore mentioned.

Marked “U. S. Exhibit 32.”

Mr. McCOURT.—I offer in evidence the original entry papers of Benjamin F. Kirk, covering the northeast quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the usual instru-

ments being contained in the record.

Marked "U. S. Exhibit 33."

Mr. McCOURT.—In connection with the entry of Benjamin F. Kirk we offer the report of fraudulent claim or entry, containing the usual affidavits, including that of claimant.

Marked "U. S. Exhibit 34."

Mr. McCOURT.—I offer in evidence the original entry papers of Elam Miller, covering the northeast quarter of section 31, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 25, 1900, the usual documents being included in the record.

Marked "U. S. Exhibit 35."

Mr. McCOURT.—No fraudulent report is contained in the records nor is in the possession of the Government at the present time.

I offer in evidence the original entry papers of Mrs. Jennie Moulton, covering the east half of the west half of section 32, township 14 south, range 4 east, [135—17] the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked "U. S. Exhibit 36."

Mr. McCOURT.—I offer in evidence the original entry papers of Jay S. Phillips, covering the northeast quarter of section 34, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 31, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 37."

Mr. McCOURT.—I offer in evidence the usual report, including the affidavit of claimant, in connec-

tion with the entry of Jay S. Phillips.

Marked "U. S. Exhibit 38."

Mr. McCOURT.—I offer in evidence the entry papers of Sadie E. Puter, covering the northeast quarter of section 20, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 19, 1900, and containing the usual documents.

Marked "U. S. Exhibit 39."

Mr. McCOURT.—I offer the report of fraudulent *clai*, or entry in connection with the Sadie E. Puter entry, which does not appear to include the affidavit of claimant, but does include the affidavit of S. A. D. Puter relative thereto, as well as the usual printed affidavits.

Marked "U. S. Exhibit 40."

Mr. McCOURT.—I offer in evidence the original entry papers of S. A. D. Puter, covering the northwest quarter of section 10, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 19, 1900, this record containing the usual papers, together with a large amount of cross-examination of Mr. Puter [186—18] which related to a contest or protest then pending against the entry of Mr. Puter, as well as all of the other entries connected with the case.

Mr. LIND.—We would ask your Honor that we may have opportunity to examine them during the noon recess to formulate such objections as we may wish.

COURT.—Very well.

Marked "U. S. Exhibit 41."

Mr. McCOURT.—We also offer, in connection with the S. A. D. Puter entry, the report of fraudulent claim or entry, showing the usual affidavits included with the claims above mentioned in relation to this specific claim, and generally with all the claims included.

Marked "U. S. Exhibit 42."

Mr. UELAND.—Let that stand like the other.

Mr. McCOURT.—I offer in evidence the original entry papers of Harry Saltmarsh covering the northwest quarter of section 24, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 1, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 43."

Mr. McCOURT.—I offer in evidence the report of fraudulent claim or entry upon the Harry Saltmarsh entry, which contains the affidavit of claimant himself, together with the other affidavits.

Marked "U. S. Exhibit 44."

Mr. McCOURT.—I offer in evidence the original entry papers of Zebulin Smith, covering the northwest quarter of section 34, township 14 south, range 3 east, which record contains the usual documents.

Marked "U. S. Exhibit 45." [187—19]

Mr. McCOURT.—I also offer the report of fraudulent claim or entry pertaining to the entry of Zebulin Smith, which contains the usual affidavits, including that of claimant.

Marked "U. S. Exhibit 46."

Mr. McCOURT.—I offer the original entry papers of Jacob W. Stillwell, covering lot 1, the north half

of the northeast quarter and the northwest quarter of the northwest quarter of section 32, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the usual instruments being contained in the record.

Marked "U. S. Exhibit 47."

Mr. McCOURT.—In connection with the Stillwell entry I offer the report of fraudulent claim or entry, containing the affidavit of claimany, as well as the usual printed affidavits.

Marked "U. S. Exhibit 48."

Mr. McCOURT.—I offer in evidence the original papers in the entry of George L. Thompson, covering the northwest quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 49."

Mr. McCOURT.—In connection with the entry of George L. Thompson we offer the report of fraudulent claim or entry, which contains the affidavit of claimant and the usual printed affidavits.

Marked "U. S. Exhibit 50."

Mr. McCOURT.—I offer the original entry of Thomas [188—20] Wilson, covering the northwest quarter of section 28, township 14 south, range 3 east, the Timber and Stone Sworn Statement bearing date January 22, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 51."

Mr. McCOURT.—I offer the report of fraudulent claim or entry in connection with Thomas Wilson

entry, which contains the affidavit of Wilson, as well as the usual printed affidavits.

Marked "U. S. Exhibit 52."

Mr. McCOURT.—I now offer in evidence the original entry papers in the entry of Ira Pilkington.

Mr. LIND.—Is that entry embraced in this suit?

Mr. McCOURT.—Just a minute. I will make a statement of that. I don't seem to have the original papers here in the Ira Pilkington matter, covering the southeast quarter of section 26, township 14 south, range 3 east.

Mr. LIND.—What does it include?

Mr. McCOURT.—We have here report of fraudulent claim or entry covering that entry, which contains the complete report of the agent upon all of the entries, together with the original of these printed affidavits which we have heretofore put in evidence, and therefore we offer it to present the original record of these other affidavits that we have put in here, as well as to supplement it later by evidence in connection with this entry itself, and the affidavits themselves.

Mr. LIND.—Might this be left in the same condition as numbers 41 and 42, so that we can examine it during the noon recess? [189—21]

COURT.—Yes, I think that will be satisfactory.

Mr. LIND.—I will suggest, if the District Attorney will bear with me, whether it would not be better to offer at this time those matters pertaining to the entries in the suit, leaving that pertaining to the other matters not involved in this suit open to be offered in

connection with such other data. That will keep it distinct.

COURT.—If it can be done it will be better, I think, to offer the records in reference to the issues involved in this suit first.

Mr. McCOURT.—I think I will put all those in evidence now.

COURT.—Then, if you have any additional testimony that you desire to offer, and record testimony that you claim pertinent to this present inquiry, the objections can appear on the record in the regular order.

Mr. McCOURT.—These, I think, should appear right along.

COURT.—Offer it now, and let the counsel look at it at noon and formulate an objection.

Marked “U. S. Exhibit 53.” [190—22]

[**Testimony of Luella Ingersoll, for the
Government.**]

LUELLE INGERSOLL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

What is your name now?

A. Mrs. Luella Ingersoll.

Q. Where do you live, Mrs. Ingersoll?

A. 1212 Campbell Street, Portland.

Q. How long have you lived in Portland, Mrs. Beeman?

A. Two years.

Q. Where did you live before you came to Port-

(Testimony of Luella Ingersoll.)

land? A. Albany, Oregon.

Q. Were you living in Albany, Oregon, in 1900?

A. Yes, sir.

Q. And how long did you continue to reside there after 1900? A. I—1902.

Q. You were married and keeping house there at that time? A. Yes, sir.

Q. Who was your husband?

A. Edson W. Beeman.

Q. You and Mr. Beeman have since been divorced? A. Yes, sir.

Q. And you recovered your maiden name—it was assigned you by the court? A. Yes, sir.

Q. Where is Mr. Beeman now?

A. At North Bend, Oregon.

Q. Did you at that time know S. A. D. Puter?

A. Yes, sir.

Q. Horace G. McKinley? A. Yes, sir.

[191—23]

Q. I refer to the year 1900. A. 1900.

Q. And prior to that?

A. No—well—no, 1900 is the first I met.

Q. And Dan W. Tarpley? A. Yes, sir.

Q. Did you know Frederick A. Kribs then?

A. Yes, sir—1901, I knew—

Q. Knew Mr. Kribs? A. Yes, sir.

Q. Didn't know him until 1901? A. No.

Q. Do you recall the incident of making a timber and stone entry early in 1900? A. Yes, sir.

Q. State to the Court the circumstances under which you took that claim—whom you made your

(Testimony of Luella Ingersoll.)

arrangements with?

Mr. LIND.—I think that is very leading.

COURT.—Let her state the circumstances under which she made it.

Mr. McCOURT.—I didn't think it very leading.

A. Shall I proceed?

Q. Yes.

A. Why, S. A. D. Puter met my husband and I and he made arrangements with my husband to procure—

Mr. LIND.—Now, your Honor—

COURT.—Just tell what you did, Mrs. Ingersoll. Nothing unless you were present.

A. I was present.

COURT.—All right.

A. I was present.

Mr. LIND.—Then let the witness state what was said and done.

A. Yes. He told my husband and I that he would give him \$25 apiece for every man he would procure to file upon timber claims—or woman—every man or woman—and that he would [192—24] give them—he would furnish all expenses and give them \$100 for their trouble, and would furnish the purchase money and all necessary expenses, and I took a claim under those conditions.

Q. Was any arrangement made as to what disposition was to be made of the land?

Mr. LIND.—Wait a moment. I object to that as leading and as calling for a conclusion of the witness.

COURT.—State what occurred and what was said

(Testimony of Luella Ingersoll.)

and done. I don't know as that was leading; it does not suggest an answer. She may state.

A. Why, yes. He took us to Roseburg—Mr. Puter didn't take us, Mr. McKinley took myself and another lady and several others, and I went before the officials there and they furnished me with the minutes of a claim and told me it was not necessary to see the land until afterwards; that they would show me on the land afterwards—I never went on the land in fact at all—and he would—he would show me the land afterwards. I went before Mr. Bridges and made filing.

Mr. LIND.—Mr. who?

A. Mr. Bridges at Roseburg and made filing on this land. I believe that was the man that took the testimony—took the affidavits—and then later on I went down there to prove up. I don't remember; I think it was something like 90 days or something of that sort—something of that kind. I went there to prove up and then Mr. Puter, he took me into a little room by ourselves and he told me to sign two papers, that they were mortgages. I never read them and he did not read them to me; and I signed them and he gave me \$100. In this transaction I thought I should have more than \$100 for my claim and to convince me that I *were* getting as much [193—25] and more than a great many, he unfolded a paper with a list of names showing, and the amount that each one got. The majority of them got \$75, but a very few got \$100, so I took \$100 for my claim.

Q. In your trips to Roseburg who furnished or

(Testimony of Luella Ingersoll.)

paid the necessary traveling expenses—hotel expenses, if any?

A. Mr. Puter—S. A. D. Puter.

Q. You stated that Mr. Puter said that you would—or agreed with you to give you \$100 for making the entry. What, if anything, was it understood he was to get out of the transaction?

A. Why, he was to get the land, of course.

Q. Did you or your husband pursuant to the arrangements which Mr. Puter made with you or your husband, secure any persons to make filings?

A. My husband secured three; I secured one.

Mr. LIND.—We object to that as hearsay—what her husband did.

COURT.—Unless she was present.

A. I was.

Q. Who was the entryman that you procured?

A. Mrs. Moulton.

Q. What is Mrs. Moulton's name at the present time?

A. Mrs. C. E. Lovejoy—Mrs. Jennie Lovejoy.

Q. Do you recall the persons that your husband secured?

A. Only one. I remember the name of one—of Peter Buffington.

Mr. LIND.—Wait a moment. I object to that as hearsay.

COURT.—I understood her to say she was present when the arrangements were made— [194—26]

A. I was—sure.

COURT.— —between her husband and this man.

(Testimony of Luella Ingersoll.)

Mr. LIND.—Is it one of the entries included in this suit?

COURT.—Yes—Peter Buffington. Her husband secured Peter Buffington.

Mr. McCOURT.—And Mrs. Moulton, too.

Q. What arrangement did you make with Mr. Peter Buffington there in behalf of these people?

A. Pardon me; I did not understand the question.

Q. I say, what arrangement did you make with Mrs. Moulton and your husband and yourself with Peter Buffington?

A. Why, he was to receive the same amount for his claim that we were—\$100. \$75, anyway—possible \$100. That is the way it was.

Q. And what did Mr. Buffington agree to do for that?

A. To file upon a claim and turn it over to Mr. Puter or the people he represented.

Q. What was the arrangement with Mrs. Moulton, now Mrs. Lovejoy, made pursuant to your solicitation?

A. She went to Roseburg in company with myself, filed upon a claim at the same time, received \$100 less her fare from Portland to Seattle, and turned her claim over the same as I did.

Q. And what was her arrangement with you? What arrangement did you make with her before she filed at all?

A. That she—I made arrangements with her that she was to file and receive \$100 from Mr. Puter and she was to turn her claim over to these people. They were to furnish all expenses, all money that was nec-

(Testimony of Luella Ingersoll.)

essary, the purchase money, and she would get \$100.

[195—27]

Q. Where was Mrs. Moulton living at the time you made those arrangements?

A. In Albany, Oregon.

Q. And in the meantime, when the proof was made in April or May, where was she living?

A. She was living in Seattle.

Q. Now then, did—were you present when Mrs. Moulton made proof upon her claim?

A. Yes, sir, I went with her.

Q. And after she had made proof, what was done and when?

A. They gave her \$100 less her fare from—they was to give her—they promised to give her—told me they would—

Mr. LIND.—I object. “They” promised. Who promised?

A. They said they would.

Mr. LIND.—Who was “they,” please?

A. Mr. Puter.

Mr. LIND.—Why don’t you say Mr. Puter?

A. Well, he is representing—

Mr. LIND.—Well, I wanted to find out.

A. Well, pardon me, I will be more explicit.

Mr. LIND.—Mr. Puter?

A. Yes, S. A. D. Puter.

Mr. LIND.—What did he do?

A. He agreed to give her \$100 for her claim.

Mr. LIND.—I want it definite.

A. Sure.

Mr. McCOURT.—If the Court please, I expect to

(Testimony of Luella Ingersoll.)

ask the Court—not with this witness, but with most of the witnesses to be called here—to indulge me with the greatest liberality in pulling from them the testimony which I [196—28] expect to show in this case. With this witness it is not necessary, but I expect to have to ask the Court for that privilege.

Q. Were you present when Mrs. Moulton was paid?
A. Yes, sir.

Q. Who paid her?
A. S. A. D. Puter.

Q. Where did he pay her?

A. It was in a little room in the same building where we did our filing.

Q. How far from the local Land Office?

A. I believe it was in that same building, if I remember rightly.

Q. And how soon was it that this payment was made after the proof was made?

A. Right there and then.

Q. Do you know whether or not Mrs. Moulton signed any instruments at the time she received that money?

A. I saw her sign some papers the same as I did. I don't know—

Q. How were those papers presented to yourself and Mrs. Moulton for signature?

A. They were folded and one was just overlapping the other a little like this. Mr. Puter told me to sign my name here and here.

Q. Who else was in the room at the time besides yourself and Mr. Puter?

A. Not anyone that I remember. I don't remember that there were anyone else in the room.

(Testimony of Luella Ingersoll.)

Q. At the time that—was Mrs. Moulton there?

A. Mrs. Moulton, myself—Mrs. Moulton, Mr. Puter and myself. [197—29]

Q. How was the payment made?

A. I can't remember whether—I believe it was in a check, but I am not positive,—no, I believe it was money. That is right; it was money, I remember.

Q. And do you recall whether or not you ever signed any other deeds or mortgages with relation to that land, except at that one time? A. No, no.

Q. You never did?

A. No, what I signed at all I signed on the same day.

Q. State whether or not yourself or Mrs. Moulton ever visited the land you filed on?

A. No, sir, never.

Q. Do you know where it is? A. No, sir.

Q. Now, prior to the time you went into the Land Office to make that proof, did you see anyone there? That is, did you see Mr. Puter or Mr. McKinley?

A. How is that question?

Q. Before you went in to make proof to give your testimony upon your entry—went into the Land Office? A. To make filing?

Q. No, to make proof.

A. The proof. I saw—I saw S. A. D. Puter, saw him on the train. He went on the same train from Albany to Roseburg with us. Saw him at the hotel.

Q. Did you have any conversation with Mr. Puter prior to going into the Land Office to make your proof, relative to what you would have to do there?

(Testimony of Luella Ingersoll.)

A. Yes, he told me that he would furnish all the expenses—

Q. I mean, as to what you would have—the nature of the proof, the nature of the testimony you would have to give? [198—30]

A. Oh, yes, he told me that I was just to sign what he told me to. I didn't understand—I couldn't understand—I didn't understand, and he said I was to just sign the papers he told me to and he would do the rest.

Q. Was he there while you were making the proof, yourself and Mrs. Moulton, in the Land Office?

A. In the Land Office, yes, sir. He stood just at one side. I believe, while we were making proof he was talking to a Mr. Booth. There was a Mr. Bridges and a Mr. Booth interested or connected there in the Land Office. He was talking to one of them while the other one was swearing us.

Q. Did you see McKinley there?

A. Not in connection with this. I saw him at the depot only the last time I was there.

Q. Was Mr. Frederick Kribs there?

A. Yes, sir, I saw him at the hotel.

Q. Did you see him at the Land Office?

A. No, not that I remember.

Q. Who made payment for your land?

A. I don't know. Mr. Puter told me Mr. Kribs, but who did I don't know.

Q. Did you? A. No.

Q. Who did you transfer your land to?

A. I don't know.

Q. Do you know in whose favor that mortgage

(Testimony of Luella Ingersoll.)

was that you signed there, if you did sign one?

A. No, I don't know. They told me it was—I never read it. I couldn't tell you positive, but Mr. Puter said it was in favor of the gentleman that was furnishing the money—a Mr. Kribs and a Mr. Smith, I believe, he told me, that was furnishing the money for all the people who made filing.

Q. How many other persons were making proof there at the [199—31] same time that you were, and with whom Mr. Puter appeared to be connected?

Mr. LIND.—That is objected to.

COURT.—I think the Government has a right to show all that occurred there at the time in connection with the entries.

A. There was Mrs. Moulton, myself and I could not state the exact number, but there seemed to be—oh, I should imagine five or six. I am not—I could not speak positively, the exact number, but there was quite a number of people there to file that same day.

Q. At the time you made proof I refer to now.

A. Well, I mean—well, at the filing. They seemed to be the same people there the day we filed, and was there again at the time we made proof. I saw the same faces, but I don't know who they were.

Q. Was Mr. Puter there when you filed?

A. No, not when I filed.

Q. Who took care of you that time?

A. Mr. McKinley went with us that time.

Q. Where did he—where did he first meet you to go there. That is, where did you first find him attached to the transaction?

A. McKinley?

(Testimony of Luella Ingersoll.)

Q. Yes.

A. Well, my husband first brought him to me. I don't know where my husband met with him and talked with him—talked it over with him; and afterwards my husband and I were together in Albany and he met Mr. McKinley and introduced him to me. We were in a buggy and drew up to the sidewalk in Albany. That is the first time I remember of ever seeing Mr. McKinley.

Q. State whether or not payment was made to you for securing Mrs. Moulton. [200—32]

A. Yes, sir.

Q. Who made that payment to you?

A. My husband gave it to me, but I could not tell you whether Mr. Kribs or Mr.—I mean Mr. Puter or Mr. McKinley gave it to him. I could not tell you which, but my husband transferred it to me.

Q. Did you see—do you know whether or not any payment was made to your husband for the persons he secured?

A. I did not see it made to him, no.

Q. You don't know that yourself?

A. No, I don't know that myself.

Q. Now then, how long was it after you made proof before you heard anything further from this claim of yours? A. Oh, something like a year.

Q. State the circumstances under which you heard of it then.

A. Well, there had been a little rumor—I could not tell you just how I heard first—that there was a Government agent coming and we was all liable to have some trouble; and then one morning Mr. Mc-

(Testimony of Luella Ingersoll.)

Kinley came to my house and told me that the Government agent would soon be there—some time during the day—to interview me in regard to this claim. And I was quite exercised and frightened. He told me that I must not—no need to be frightened, he said, “Because he is our man.” I said, “How do you mean?” “Why,” he said, “we have him fixed. He is our man.” And I—

Mr. UELAND.—Wait a moment.

Mr. LIND.—My associate suggests properly that this should be stricken out. There is no charge in the bill that McKinley was a conspirator. He is not a party to the bill and any statements made to him would be wholly hearsay so far as the alleged conspiracy was concerned. There is no allegation that he was a party to the conspiracy, nor is he [201—33] a party to this suit.

Mr. McCOURT.—This evidence will be followed by showing his connection with Mr. Puter and that they were one and the same.

Mr. LIND.—We object to this evidence on the ground that it is irrelevant and hearsay; that the McKinley referred to by the witness is not a party to this action nor alleged to be one of the conspirators, statements made to him are mere hearsay and for that reason should not be allowed in this case. I ask that the statement already made relating a portion of the conversation with McKinley, be stricken out.

COURT.—It will be admitted under the promise of the District Attorney to connect Mr. McKinley with this transaction as the representative and au-

(Testimony of Luella Ingersoll.)

thorized agent of Mr. Puter.

Mr. McCOURT.—And also of Kribs.

COURT.—Of the parties, whoever they may be. For that reason they will be admitted at this time.

Mr. LIND.—For the present there is an exception.

A. Well, he told me that I should not fear the Government agent. That—he says, “He is our man,” and I said, “But he is a Government agent, they tell me.” He says, “But you don’t need to fear him. We have him fixed. His son is the typewriter.”

COURT.—His son is what?

A. “His son is the typewriter in this case, and they will come here and simply take a statement, and I will come with them, and should they ask you who negotiated the deal, say Dan Tarpley.” But I didn’t see Dan Tarpley in the transaction prior to this at all; in fact after this not at all. And he [202—34] said “I will come with them, and I will sit where you can see me, and when you are to say ‘Yes,’ I will nod my head, and when you are to say ‘No,’ I will shake my head.” They afterwards—he went away and in the course of an hour or two Mr. McKinley, Mr. Kribs and this Government agent—his name is something like Stafford or Stratton or something.

Q. Stratford.

A. Stratford, that is the name—and his son came to my house and they took my statement. He would ask questions and I would say, “Yes” or “No,” as I had been instructed to say, and after the statement was all in, they brought me the statement to sign and I signed it, and Mr. McKinley and Stratford, his son

(Testimony of Luella Ingersoll.)

went to the carriage; Mr. Kribs started to go and returned and asked for a drink of water. I brought him a glass and pitcher with water. He drank a glass, returned the glass with a ten dollar gold piece in the glass, what for, I don't know, and turned and left me.

Whereupon proceedings adjourned until 2 P. M.
[203—35]

[Proceedings Had at] Portland, Oregon, April 19,
1910, 2 P. M.

Mr. LIND.—To the documents that were offered we make only the same objection that we made to U. S. Exhibit 2, with the additional objection that Mr. Pilkington's entry is not involved in this suit. Hence it has no—I don't suppose that the evidence is offered as substantive evidence in regard to the Pilkington claim. That is correct, is it not?

Mr. McCOURT.—It is offered merely as a similar transaction and so far as it is necessary to offer it to sustain the balance of the testimony along with the affidavits contained in the record.

Mr. LIND.—There is another matter to which I desire to call the attention of Court and counsel and that is this: Pilkington, McKinley, Puter and Kribs and Drinker made affidavits covering all the claims involved in the suit and some others. It appears that the General Land Office or the Government had those affidavits printed and inserted a printed copy of these affidavits in each separate record of proof offered in this case. Now the counsel for the Government suggested that the defendants had used printed affidavits, which is not warranted

by the facts, and I am sure that upon reflection he will withdraw that statement, and I ask the Court that these printed copies be eliminated from each separate record in the case, inasmuch as it simply encumbers unnecessarily the record. They are duplicated, as my associate suggests, twenty-eight times. I have examined these matters carefully during recess so that I know I speak accurately, and, if I may venture the suggestion, I feel confident that that printing was done by the Government printing-press in Washington. That I don't know, only that is my judgment.

Mr. McCOURT.—I don't know whether they were printed [204—36] by the defendants or not. I don't think I said they were. I said they were taken with the assistance and at the suggestion of the defendants in pursuance of the purposes of the original conspiracy. I don't see any reason for eliminating these printed records.

COURT.—Do I understand that the original affidavits connected with some of the separate reports were printed and copies attached—these printed affidavits attached to all the others?

Mr. LIND.—Yes, in each case and it is the elimination of these that we ask,—

COURT.—I don't see that they have any material bearing on the case, one way or the other.

Mr. LIND.— —for no other reason, your Honor, than that it encumbered the record unnecessarily, and if the District Attorney is not ready to finally dispose of that matter now, let him verify my statements.

Mr. McCOURT.—My information is—I don't

know how accurate it is—that the defendants had them printed themselves, but I am not prepared to say that definitely right now. However, it seems to me that they constitute the record in each particular entry as they stand, and there could be no purpose in eliminating them. They would be there just the same. We could not tear them out.

Mr. LIND.—There will have to be a record made out and printed.

COURT.—They might be just as well eliminated in printing.

Mr. LIND.—Except the original.

COURT.—It is not necessary to encumber the record.

Mr. McCOURT.—I may later on be able to show the defendants printed them themselves. [205—37]

**[Testimony of Mrs. Luella Ingersoll, for
Government (Resumed).]**

Mrs. LUELLA INGERSOLL resumes the stand.

Direct Examination (Continued).

(Questions by Mr. McCOURT.)

What did Mr. Kribs say when he handed you the \$10?

A. What is it?

Q. What did Mr. Kribs say when he handed you the \$10? A. Not a word.

Q. What did you say? A. Not a word.

Q. How long did he stay after that?

A. Not an instant. Handed it to me and turned and went.

Q. Have you since that time seen that Stratford affidavit that was taken from you there?

(Testimony of Luella Ingersoll.)

A. What is that?

Q. (Read.)

A. The original?

Q. Yes, the original.

A. I saw the original in your office.

Q. Were you—state whether or not you were furnished with a copy of it at the time it was taken.

A. No, sir—at the time I gave my affidavit?

Q. Yes. A. No, sir.

Q. Have you since been? A. Yes, sir.

Q. When?

A. I couldn't state the date, but very recently.

Q. State to the Court how Mr. Kribs and Mr. McKinley and Mr. Stratford and his stenographer were situated with reference to you in the room at the time the affidavit was taken?

A. I sat the same as here. Mr. Kribs sat to my right; Mr. McKinley sat in that corner of the room—Mr. Stratford sat in front of me and the boy at the typewriter sat there on [206—38] my left.

Q. I call your attention to the affidavit which purports to have been made by you in U. S. Exhibit 8, or which is contained in U. S. Exhibit 8, and ask you if that was the affidavit which you made at that time, if you know.

A. This is my signature, but there are some things in that that I don't remember.

Q. What, for instance?

A. Well, it states there that I—I don't remember being asked the question where I said that Mr. Tarpley—I paid money to Mr. Tarpley. I didn't do that. I never paid—or Mr. Tarpley never paid me money.

(Testimony of Luella Ingersoll.)

I had no dealings with Mr. Tarpley in regard to that at all. Mr. McKinley told me to say, if I was asked who negotiated the deal, to say Mr. Tarpley, and then if I was puzzled as to say "yes" or "no," why, he would do that or that, and I said "yes" at that and "no" at that.

Q. That would be a shake of the head?

A. Yes, a nod of the head for "yes," and this way for "no," and I followed those instructions.

Q. Where was this affidavit taken?

A. This statement?

Q. Yes. A. In Albany, Oregon.

Q. You were living there at that time?

A. Yes, sir.

Q. Do you know where Mr. Kribs was living at that time? A. No.

Q. Or where Mr. McKinley was living?

A. No, I don't know where they were living.

Q. Did you ever know a man by the name of John A. Willd?

A. No, that is the man that—I remember the name, but I don't [207—39] know the man. I never saw the man. That is the man that Mr. McKinley told me to say I sold my claim to.

Q. The statement contained in the affidavit as to how much you received for the claim, did you know at that time?

A. How is that? I was told to say \$850, but I only received \$100, and that was from Mr. Puter. He gave me \$100 at the—

Q. Who told you to say that?

A. Mr. McKinley told me to say that.

(Testimony of Luella Ingersoll.)

Q. Did Mr. McKinley give you any instructions as to what you should say regarding having a prior agreement?

A. Yes, he told me to say that I hadn't.

Q. You spoke of having received a copy of that affidavit lately. How lately with reference to the time trial was set in this case or subpoena issued?

A. I could not give the exact date, but it was—oh, it is within the month.

Q. Within a month? A. Yes.

Q. Did the—how was it delivered to you?

A. Why, it was sent to me.

Q. By mail? A. No.

Q. How?

A. Well, it was brought to my house.

Q. Did the party bringing it state who sent it to you?

Mr. LIND.—Wait a moment. Who was the party, it seems to me is the next important thing.

COURT.—Yes, I think she had better state who the party was.

Q. Do you know who the party was?

A. I don't want to say who the party was.

Q. Why? Did the party desire his identity concealed? A. Pardon?

Q. Did he desire his identity concealed? [208—40]

Mr. LIND.—I object to that, your Honor. It is immaterial what his desires were.

Mr. McCOURT.—I will show one of the defendants in this case sent the papers to her.

(Testimony of Luella Ingersoll.)

COURT.—Let her state who it was. Who the party was.

A. Must I do that?

COURT.—Yes.

A. Well, I don't want to.

COURT.—Well, that is a part of your duty.

A. If you could excuse me, please do. I don't want to. Is there no other way? I don't want to answer the question.

Q. You mean you don't want to give the name?

A. I don't want to give the name.

Q. Can you explain why you don't want to?

Mr. LIND.—We object to that. We want the whole truth in this matter.

Mr. McCOURT.—You want the name? Very well.

Q. What was the name?

A. Who wants it? Must I give?

COURT.—Yes, give the name.

A. Please don't. Ask him not to insist.

Q. They want the name before we can proceed further.

COURT.—You can answer the question.

A. Is there no other way?

COURT.—No other way.

Q. Before proceeding I will ask another question or two. How long had you known Dan W. Tarpley before Mr. McKinley asked you to use his name in that affidavit? If at all?

Mr. LIND.—Why not dispose of the pending question in the matter?

A. I met him about—oh, I should—about the

(Testimony of Luella Ingersoll.)

time they were locating as near as I can remember—about one year. He [209—41] was at Sweet Home, I believe, was the first time, as I remember. I am not positive.

Q. State whether or not Mr. Tarpley was the party who brought you the copy of this affidavit.

A. What is it?

Q. State whether or not Mr. Tarpley was the party who brought you copy of this affidavit.

Mr. LIND.—Wait a moment. That is not proper conduct on the part of the—

COURT.—Let her state who brought the affidavit. Let her state the name of the party who brought it to her. You may state the name of the party who brought the affidavit.

A. You compel me to?

COURT.—Yes, I do.

A. Mr. Tarpley.

Q. Dan W. Tarpley?

Mr. LIND.—What is the name?

Mr. McCOURT.—Dan W. Tarpley.

Q. For what purpose did he state that the affidavit had been given to you?

Mr. LIND.—That is objected to as leading and as assuming that he made a statement.

COURT.—Let her state what he said about it when he gave it to her.

A. To refresh my memory.

Q. Did he state who had sent it to you?

A. Mr. Kribs.

Mr. LIND.—Wait a moment; that is objected to.

COURT.—Let her state what he said when he gave

(Testimony of Luella Ingersoll.)

her the affidavit.

Mr. LIND.—Unless, of course, that is connected with [210—42] the defendants it will be stricken out.

COURT.—Oh, yes. The Government is now trying to prove the first step in this case.

Mr. LIND.—What was the last question and answer?

Question and answer read.

A. Mr. Kribs.

Cross-examination.

(Questions by Mr. LIND.)

What do I understand your present name to be?

A. Mrs. Ingersoll.

Q. Have you been married since you were divorced? A. No, sir.

Q. From Mr. Beeman? A. No, sir.

Q. That is your maiden name?

A. No, sir that was my name—

Q. I say, that was your maiden name?

A. No, it was not my maiden name. I was married before.

Q. And that was—

A. That was my former husband's name.

Q. Were you divorced from him?

A. Yes, sir.

Q. How long have you resided at Albany, in this State?

A. Oh, let me see. I don't remember how long I lived there.

Q. Well, approximately. I mean prior to 1900 how long had you lived there?

(Testimony of Luella Ingersoll.)

A. I think it was something like 1890 or 1891, something like that I went there. It was in the nineties, the early nineties.

Q. Did you go there as the wife of Ingersoll—

A. No.

Q. —or the second husband?

A. The second husband. [211—43]

Q. Where did you live prior to the time that you went to live in Albany? A. In Portland.

Q. And how long had you lived here?

A. Well, I say in Portland, but I have lived in Seattle and in Portland from the year 1888 back—part of the time in Seattle, part of the time in Portland.

Q. As Mrs. Beeman then?

A. No, as Mrs. Ingersoll.

Q. Oh, yes, where were you married to Mr. Beeman? A. I was never married to Mr. Beeman.

Q. Oh, when did you commence to cohabit with Mr. Beeman?

Mr. McCOURT.—I object to that as immaterial.

A. Now, listen to me. Let me tell you something. The courts of this town will exonerate me.

Mr. LIND.—I am not asking for anything of that kind.

A. No, but I know what you are trying. The courts of this town will exonerate me in this. I was supposed to be divorced from Mr. Ingersoll and was not divorced, but afterwards when I found that my life as a wife—as I supposed I was the wife of Mr. Beeman—

Q. I did not ask that nor insinuate anything

(Testimony of Luella Ingersoll.)

wrong about it.

A. You insinuated it. When I found I was not his legal wife the courts of this town—Multnomah courts—completed the divorce, and I never lived with Mr. Beeman afterwards—after I found I was not his wife.

Q. How long did you cohabit with him?

A. I was from—

Mr. McCOURT.—I object to that—

A. I believe it was—I can't tell you.

Mr. McCOURT.—Just a moment. [212—44]

Mr. LIND.—I will show good faith and show the materiality.

A. I will bring my divorce proceedings so you can see I am not the woman he is trying to picture me.

Mr. McCOURT.—That has nothing to do with the case and if you will keep still a moment we will cut it out.

Q. I ask you how long did you live with Mr. Beeman, and I repeat that.

A. It was 1890, I believe, was the commencement, and from that until—no—yes, 1890, until 1902—two or three.

Q. What was Mr. Beeman's business?

A. He was a railway conductor.

Q. During all the time that you resided with him?

A. Very nearly, with the exception of a few months.

Q. Was he a railroad conductor in 1900?

A. Well, I can't say whether he was employed or

(Testimony of Luella Ingersoll.)

not. He was part of the time out of employment, part of the time with employment.

Q. As a matter of fact, he was a land man, was he not? A. A what?

Q. He had a good deal to do with the location of claims?

A. He—when he was out of employment he started to survey out and locate some claims, but I believe Mr. McKinley usurped the claims and got in ahead of him. He never did no more. He never located very many—just two or three.

Q. In 1900—in February of 1900—

A. Well, I can't—

Q. —he was engaged in locating claims?

A. No.

Q. And surveying out claims, was he not?

A. Well, he surveyed a few and he procured—he procured three locators for Mr. Puter.

Q. Well, now, I didn't ask you for that at this time. I will [213—45] come to that later. He found claims for parties who sought claims and located all comers, did he not?

A. Well, I don't think he ever located any of his own accord. I don't think he did.

Q. Didn't you say a moment ago that he did until McKinley—

A. I say he did one. He located one that I know positively; a Mr.—

Q. I don't care about the name.

A. Well, all right.

Q. Now, you assisted him in that work, did you not? A. Part of the time.

(Testimony of Luella Ingersoll.)

Q. Yes. A. As much as I could.

Q. You went with him into the woods—into the timber, did you not? A. Well, no, no.

Q. Did you or did you not? A. I did not.

Q. Never at any time?

A. Only when we were hunting for Mr. Olsen,—a man that was dead—one of our friends, was the only time.

Q. When was that?

A. I can't tell you the exact date.

Q. Was it in the year 1900?

A. I could not tell you—would not be positive.

Q. Did you on that occasion go up to township 14, ranges 2, 3 and 4? A. No.

Q. You were never up there?

A. No, I don't know anything about them.

Q. Did you never state to Mr. McKinley that you had been through those ranges—been through that section of the [214—46] timbered country of Rock Creek?

A. No, most decidedly no. I never.

Q. Did you never don breeches—men's breeches—and go through the woods? A. Me?

Q. Yes, you. A. No, sir.

Q. Well, did you tell—did you or did you not state whether you had done so?

Mr. McCOURT.—Just a moment. I object because the time is not definitely fixed.

A. No.

Q. Well, I will make it more definite. To Mr. McKinley? A. No.

Q. In the month of February, 1900?

(Testimony of Luella Ingersoll.)

A. No.

Q. You did not? A. I did not.

Q. What was your business at Albany in the months of January and February, 1900?

A. I was a housewife. I nursed some. I—

Q. Did you keep boarders? A. No.

Q. Did you rent rooms? A. No.

Q. When did you first meet Mr. S. D. Puter?

A. Well, I couldn't tell you positively, but it was—as to the date, but I was first introduced to Mr. Puter by my husband.

Q. When?

A. On the streets of Albany. I could not tell you the year. I could not tell you the month.

Q. On the streets?

A. Yes, we were in our buggy, and my husband already knew him and drew up to the curb and introduced me.

Q. When was that, approximately?

A. Well, it was—it was when he was making arrangements to [215—47] have Mr. Beeman—get locators for him.

Q. Well, when was that? You made your entry in February, on the 26th of February? A. Yes.

Q. Now, when was it with reference to the date of that entry?

A. It was very close to that time.

Q. Before or after? A. It was before.

Q. How long before?

A. Well, a short time. I could not tell you how long before.

Q. Haven't you any idea?

(Testimony of Luella Ingersoll.)

A. I could not tell as to the month or week; as to six months, I could not tell you, but it was within a year, I should imagine.

Q. You think it was within a year?

A. I think so.

Q. Was it within a month?

A. I could not tell you.

Q. Haven't any idea? A. I am not positive.

Q. Well, what is your best recollection? Was it three months, six months or nine months? You must have some idea.

A. I cannot tell. I told you I could not tell you. I could not tell you if it was one month, two months or three months, but it wasn't very many months before I went to Roseburg and filed on my claim.

Q. Did you meet Mr. Puter on the streets of Albany?

A. My husband called him to the edge of the sidewalk.

Q. Yes.

A. Yes, and introduced him to me. That is the first I ever recollect of seeing him.

Q. Was that the time that you had the discussion with him [216—48] about land entries?

A. Yes, he told my husband that he would give him \$25 for every man he would procure for him.

Q. That was while you were sitting in the buggy?

A. Yes. I said, "If I get anyone will you do as well by me?" And he smiled and said "Yes."

Q. Your husband was engaged in the locating business himself, then?

A. No, not—he had given it up because they had

(Testimony of Luella Ingersoll.)

got in with a lot of other men and put them on claims. He lost those that he had surveyed out.

Q. Your husband was evidently acquainted with Mr. Puter, then?

A. Yes, he evidently was, or he would not have introduced him to me.

Q. Did you infer from what conversation you overheard between them that they had discussed these matters before?

A. I did. In fact, my husband told me they had.

Q. And did you ever—when did you next see Mr. Puter after that?

A. When I went to prove up.

Q. Where did you meet him then?

A. Well, the first I saw of him was on the train directly after we left the depot in Albany. He came through the train and stopped and sat down and talked to me in the car.

Q. Did you ride together all the way to Roseburg?
A. Why, no.

Q. Who were on that train that you knew besides Mr. Puter?
A. Mrs. Jennie Moulton.

Q. Who else?
A. I don't remember.

Q. Was Mr. McKinley on the train?

A. I could not tell you—I am not positive.

[217—49]

Q. You knew Mr. McKinley?

A. I knew him, but don't remember. I saw him in Roseburg, but don't remember seeing him on the train.

Q. How long had you known Mr. McKinley?

(Testimony of Luella Ingersoll.)

He lived right there at Albany, did he not?

A. I don't know a thing about where he lived.

Q. How long had you known him prior to that time?

A. Oh, I had known him—I saw him. He went with us when I went to do my filing.

Q. How is that?

A. He was the one that took Mrs. Lovejoy and I to Roseburg when I filed on this claim.

Q. Well, that is the trip I was speaking about. That is the time you met Mr. Puter, wasn't it?

A. No, I didn't meet Mr. Puter until I went to prove up. I told you so.

Q. Well, I didn't understand you.

A. Pardon me, I thought you did.

Q. So the only conversation that you had ever had with Mr. Puter prior to the time that you went to prove up, was the occasion when your husband called him or he called your husband when you were out buggy riding?

A. That is all—that is all I remember.

Q. Yes. Now, you stated you had made a bargain with Mr. Puter?

A. Well, as I told you, I said, "Would you give me the same?" And he said, "Yes."

Q. Give what?

A. Would he give me \$25 for every one that I procured to file upon a claim.

Q. That was all the talk you had with him on that first occasion, was it? [218—50]

A. That was all—that was all, and he said "Yes."

(Testimony of Luella Ingersoll.)

Q. When did you make the bargain with him in regard to your own claim—the price you were to have for it, etc.?

A. It was when—when we went to file. Not when we went to file, but he had told us at the time—

Q. Now, when did you make the bargain with *him regard* to the price you were to have for your claim?

A. When we were talking.

Q. Where?

A. Where? In Albany.

Q. When?

A. He would give me—well, if you won't ask the questions so fast I will tell you. He would give us all \$100, and he would,—for our claims. He would bear all expenses; he would furnish the purchase money and give us each \$100, and for every one that I would—or that my husband would get—he would give us \$25 apiece. Afterwards he only gave us \$15.

Q. Give you each \$25?

A. Give us \$25 for every man that we would furnish him that was entitled to a timber filing.

Q. Yes.

A. And that would file and sign it over to him.

Q. And he would pay all your expenses?

A. He would pay all expenses. He would give us \$100.

Q. Yes. You need not repeat that now. You stated it once. But did he give you any money at that time?

A. When?

Q. When he made that arrangement?

A. Why, no.

Q. When did Puter first give you any money?

(Testimony of Luella Ingersoll.)

A. The first money he gave to me direct—
[219—51]

Q. No, no, direct or indirect. When did he first give you any money?

A. Well, it was after my husband went to him. He had procured—we had procured three men. We went to him for a settlement and he would only give us \$15.

Q. When was that?

A. I can't give you the dates.

Q. Was it before or after you filed on your claim?

A. I can't tell you for sure.

Q. Well, what is your judgment?

A. Well, I have no judgment, because I am not positive. Whether he gave that—this money for procuring these people—before I filed or afterwards, but I am under the—well, I can't tell positively, so I won't state.

Q. Who paid your *far* down to Roseburg when you went down to file?

A. Transportation was furnished.

Q. By whom?

A. Why, I don't—Mr. McKinley—you better ask him. He is the one that passed us all.

Q. Did Mr. McKinley furnish you transportation when you went first to Roseburg to file?

A. The first time—certainly.

Q. Why didn't you say so?

A. He didn't give me the ticket. He didn't give me the money, but it was fixed on the train some way.

(Testimony of Luella Ingersoll.)

I don't know how. We simply went on the train and went.

Q. You talked with Mr. McKinley on that occasion? A. What is it?

Q. You talked with Mr. McKinley on the occasion of that trip, did you not?

A. I don't remember of any conversation direct, no. I may think of it, but I don't remember now.
[220—52]

Q. Didn't he state to you that he had advanced the money for that trip, and didn't he actually advance the money?

A. I didn't see any money.

Q. How? A. I didn't see anything, no.

Q. Advance the money for the trip—

A. He said our transportation was fixed. That was understood when we were talking that he—

Q. I am not asking about what was understood.

A. Well, what I understood when I was talking with Mr. Puter, that our expenses would be paid to Roseburg.

Q. But you hadn't talked to Mr. Puter since the time that you saw him at the buggy. Who did you get the information from with regard to the payment of your expenses to Roseburg?

A. I don't remember, but I believe it was Mr. McKinley, but I am not positive.

Q. You believe it was Mr. McKinley?

A. I believe, but I am not positive.

Q. Who advised you when to start, your husband or McKinley? A. Mr. McKinley.

(Testimony of Luella Ingersoll.)

Q. How long before you started did Mr. McKinley advise you that you should go to Roseburg on a certain day?

A. I could not tell you. I am not positive.

Q. The same week or the week before?

A. I could not tell you. I only know I was given to understand that I had to be there on a certain day.

Q. Given to understand by whom? Again, if you please, by Mr. McKinley?

A. I am not positive whether Mr. McKinley told me or my husband, but it was—that was the day I went and they were [221—53] there to meet me. They, in fact, went on the train. Mr. McKinley went on the train the same day I went; the same train Mrs. Lovejoy went and—

Q. Your husband too?

A. No, he didn't take any claim.

Q. He didn't go to Roseburg at all?

A. I don't think so. Not to my knowledge.

Q. Now, did Mr. McKinley have a conversation with your husband that you knew about or heard or oversaw—overheard or saw?

A. I don't remember just now.

Q. Did McKinley call at your house on several occasions before you went to Roseburg?

A. No, McKinley's first call at my house was when he came to post me what to say to the special agent. That was the first visit.

Q. Now, did your husband have an instrument for surveying out claims?

A. I could not tell you how he did it. He and

(Testimony of Luella Ingersoll.)

another man were working together.

Q. Did he turn over any claims to McKinley or give him the notes of any claims that he had looked up?

A. I don't think so. I think McKinley did not need them turned over. He looked them up himself.

Q. Well, did your husband say anything about that to you?

A. Well, he said McKinley had got in with some man and located on claims that he surveyed out.

Q. When was that?

A. That was just prior to him locating those other people.

Q. Was it prior to the time that you went to Roseburg to file? A. Yes. [222—54]

Q. How long prior?

A. Oh, not but a few months.

Q. Not but a few months?

A. Not but a few months.

Q. Well, may it not have been only a few days?

A. Possibly; I could not say, but I don't think it was a few days, because he was somewhat angry for losing his work in surveying out those claims and he told me he had some talk with him about it, and they told him that he could make more money—they would give him \$25 for every one that he would bring to them that was entitled to a timber filing.

Q. What was your husband accustomed to charging for locating people?

A. Well, when he located them himself it was \$75.

Q. That was the customary charge of locators for

(Testimony of Luella Ingersoll.)

locating persons on claims, was it not?

A. I could not tell you. That was what he charged for taking a man to a claim and showing him the minutes of the claim and locating him.

Q. Yes. Now, did those locators occasionally stop at your house? A. No, sir.

Q. They did not? When you went to Roseburg on this occasion with Mr. McKinley, you say you saw Puter on the train, did you?

A. No, not that occasion.

Q. Oh, that was later when you went to make final proof? A. Yes, sir.

Q. It was then you discussed the matter more fully with Puter, was it?

A. How do you mean? [223—55]

Q. The whole arrangement between you and Mr. Puter?

A. It was then that he paid me the \$100. I tried to get more for my claim, but he told me that was as much as any one got, and the majority of them only got \$75.

Q. Well, why did you try to get more?

A. Because I felt as though 160 acres of timber ought to be worth more than \$100 to a woman or anyone, but he told me that was all it was worth at that time and that it would be years upon years before it would become valuable; and I was a poor woman and a hundred dollars was a lot of money to me.

Q. Yes.

A. He said it was no expense to me whatever.

(Testimony of Luella Ingersoll.)

Q. Well, you had made a bargain before, had you not? A. Yes.

Q. Well, why did you try to get more at that time?

A. The same as you would or anybody else—self interest, natural.

Q. In the Land Office who were present at the time you made your final proof?

A. Mrs. Lovejoy—or Mrs Moulton—Mr. Bridges, Mr. S. A. D. Puter and Mr. Booth. I don't remember. There were others but I don't remember who they were.

Q. Bridges was the Register, was he?

A. I believe so.

Q. And Booth was the Receiver?

A. I believe so.

Q. Who took your proof?

A. I believe it was Mr. Booth. I am not positive, but as I remember, it was Mr. Booth,

Q. Did you get your final receipt right there and then? [224—56]

A. I don't know what it was. I didn't get anything, only \$100.

Q. Where did you get the \$100?

A. Mr. Puter gave it to me.

Q. In an office of the Land Office building?

A. No, it was in a little room. He took me in another little room.

Q. In the same building?

A. I—I am not just perfectly clear on that, but I—

(Testimony of Luella Ingersoll.)

Q. But near by?

A. Well, it was either in that building, but I can't tell you positively, but it was in a little room. I don't know whether it was in that building or over at the hotel. I can't tell you for my life, sure.

Q. How soon after that was it—after you made final proof?

A. Right there and then that same date.

Q. Shortly after you made final proof, was it? Was it after or before you made proof?

A. I don't know what you mean by making proof.

Q. The papers that you submitted to the Register and Receiver—that Mr. Booth took.

A. No, he took me in a room and he had me sign two papers. I don't know what they were for my life. He told me they were mortgages, and I signed two. There were one overlapped one over the other, and I signed my name here and here where he directed. And he gave me the \$100 and then I went back in another room and then Mr. Booth did something—I don't know what it was. They said it was my final proof. I don't know what it was.

Q. Now, did you sign your name to one or two papers on that— [225—57]

A. To two papers; that is, I signed my name twice. I don't know whether to two papers, or one folded up, for I could not tell you. They were overlapped like that.

Q. Are you sure that you signed your name only once—only twice?

A. That is all I remember.

(Testimony of Luella Ingersoll.)

Q. I wish to call your attention to "Defense Exhibit 'A' for Identification." Is that your signature? A. There?

Q. Yes.

A. It don't look like it. No, sir. I never wrote that to my knowledge. I don't think so. That doesn't look like—that is too smooth for me. Compare it with that statement.

Q. Well, now, then—this paper inquired in regard to is the note attached to "Exhibit 'A' for Identification."

A. I don't believe I did. I don't think that is mine. That isn't the way I make my—no. I don't think it. It don't look like it. Compare it with the other. There is the character all through it all.

Q. Wait a moment. I turn the paper over and ask you whether that is your signature?

A. Yes. That is my—

Q. On the mortgage?

A. That is my signature.

Q. Is that your husband's signature?

A. It looks like it. I can't be positive of it, but I believe so. I don't know; I couldn't swear for him.

Q. Is that your husband's signature on the note—your then husband?

A. I don't know. Now, that is mean of you to talk to me—

Q. No, I said— [226—58]

A. Well, that is all right. No, I don't think so. It don't look like it.

Q. I didn't mean to. You must pardon me. I

(Testimony of Luella Ingersoll.)

want to know whether Mr. Beeman—

A. Sure. I don't know whether that is Mr. Beeman's or not. I could not tell you. I don't recognize that as mine.

Q. Was Mrs. Moulton, now Mrs. Lovejoy—was she present in the room at that time when you signed this paper?

A. Yes, I am under the impression she was. I am quite sure, because we weren't separated.

Q. Did she sign this paper as a witness? What is your recollection in regard to that?

A. I don't remember.

Q. Do you recall of her ever signing a paper as a witness that you executed in connection with this matter?

A. No, I don't recall anything of the kind.

Q. Do you know Mr. Crawford?

A. Crawford?

Q. Crawford—A. M. Crawford.

A. I can't place him and his name is familiar. I can't place him.

Q. Was he present when you executed this paper?

A. I cannot remember. I don't—I don't remember of anybody being present—no.

Q. Did you sign any more papers on that day than those two, the note and the mortgage, assuming that you signed the note?

A. I don't remember that I did. I don't remember of signing anything, only two, as he gave it to me folded in this way.

Q. How much money did you get there that day?

(Testimony of Luella Ingersoll.)

A. \$100. [227—59]

Q. Now, let me refresh your memory by a suggestion. As a matter of fact, didn't you get \$75 there that day and \$25 later in Albany?

A. No, no, not as I remember it.

Q. Well, are you sure that your memory is accurate?

A. The same as you would be when you think you remember a thing—as I remember it.

Q. If it should appear by other testimony that \$25 was paid you later in Albany—

A. No, no.

Q. —making \$100 in all, would you say—what would you say then?

A. Well, I don't remember anything of that sort. As I remember it, I was paid \$100 there that day in greenbacks.

Q. When did you first see Mr. Kribs, the defendant in this case?

A. At the hotel in Roseburg. I believe it was the time—I can't remember whether it was the time that I proved up or made my filing, but I am under the impression that it was the time that I proved up.

Q. And that was the time that Mr. Puter told you that Mr. Kribs would furnish the money for this claim? A. What is it?

Q. Was that the time that Mr. Puter told you that Mr. Kribs would furnish the money for this claim? A. I don't remember.

Q. You testified a while ago that Mr. Puter told you that Mr. Kribs would furnish the money for this

(Testimony of Luella Ingersoll.)

claim and take a mortgage or mortgages?

A. Kribs and Smith. I didn't—it must—well, I am not positive whether it was that time, but I believe it was [228—60] when—I believe it was when I proved up. I am not positive, but as I remember it.

Q. Had you ever heard of Kribs prior to that time? A. Of who?

Q. Of Kribs until Puter told you about him on that occasion?

A. I can't remember; I am not positive. I understood they were—and I can't tell you how I understood it—I can't tell you who told me—but there were men in Minnesota—there was a man in Minnesota—capitalists—I don't remember how. I can't give you an accurate account of that.

Q. That would furnish the money for making this final proof?

A. Yes, yes. They were the ones that was eventually buying the claims.

Q. Now, who gave you that information?

A. Well, I just told you I can't remember. I don't remember whether my husband told me or—I don't remember. I can't tell you positive whether it was told to him and he told me.

Q. Your best recollection is that you never heard—you never saw Kribs until the occasion when you went to Roseburg to make final proof and when this mortgage was given?

A. That is the first time that I remember of seeing Mr. Kribs—was at Roseburg when I—as I re-

(Testimony of Luella Ingersoll.)

member it, it was there when I filed or when I proved up, and I can't tell you positively, but believe it was when I proved up. I am not positive.

Q. How did you happen to notice him? You saw him—was he called to your attention? Did you meet him?

A. Well, he was in the—he came out of a room off the parlor at the hotel. That is the first, and Mr. Puter said—we sat out around the railing of the hotel—we sat there and was talking and he pointed out Mr. Kribs and another [229—61] gentleman. I don't think he told me who the other gentleman was. He says, "There is one of our men."

Q. Well, now, I ask you again: Mr. Puter having pointed him out, it must have been at the time that you made the final proof, because Mr. Puter was not there when you made your filing?

A. It must have been. That is what I told you. I was under the impression that was the time.

Q. Now, did he say anything to you—did Mr. Puter at that time say anything to you about having other men in view who might buy claims?

A. No.

Q. In the East? A. No.

Q. Did he speak of Mr. Kribs as the buyer or as loaning money, or what?

A. He said that—well, he pointed Mr. Kribs out as one of the men that furnished the money, and he had at the time—the man he pointed out as Mr. Kribs had a valise, and I laughed and said, "Is that what he carries his money in?" He laughed and

(Testimony of Luella Ingersoll.)

said, "I guess so." Just a little joke that passed as he pointed him out.

Q. That is all you knew about Mr. Kribs' connection with it, what you heard in that joking conversation?
A. Oh, no.

Q. Well, when did you hear anything more?

A. Why, I couldn't tell you when, but we each knew that those—it was—I don't know. We all understood that those men in the East was to buy our claims.

Q. What men in the East?

A. Why, Mr. Smith. I don't know what Mr. Smith it was. He was associated some way, Mr. Puter said, with Mr. Kribs. [230—62]

Q. Where did Mr. Kribs live?

A. I don't know. I didn't ask him.

Q. Well, now, Puter said at this time that Smith was associated with Mr. Kribs, did he?

A. Sure.

Q. What did he say? Just give his—

A. Well, that is what he said. That Mr. Smith and Mr. Kribs—"There is one of our men," and he pointed out this one man and said that one man was—

Q. Did he point out Mr. Smith to you?

A. No, no, no.

Q. Did you ever sign any papers after that day to Mr. Puter?
A. Did I ever do what?

Q. Did you ever sign any papers before Mr. Puter after that day?

A. No, not that I remember.

Q. Did he ever tell you that you signed a deed?

(Testimony of Luella Ingersoll.)

A. That I what?

Q. That you signed a deed for the land?

A. No, I never talked to him about it. All I did, I just signed the two papers there, the one time. I never talked to him. Whether I signed a deed or what I signed.

Q. Let me ask you again: Did Mr. Puter ever tell you that you had or that he desired you to sign a deed for this land? A. Why, no.

Q. Did you intend to sign a deed for that land?

A. Why, no. All I was looking for was my \$100 and they took care of the rest of it.

Q. Well, I know. Did you yourself intend to sign a deed for that land at that time? [231—63]

A. This is the way I understood it.

Q. Now, please, kindly answer my question. Yes or no. Did you at that time intend to sign a deed for this land—to sell the land?

A. Well, I can't answer it without you let me answer it my own way; as he gave me to understand it—

Q. Well, did you intend to sell this land at that time?

A. Why, sure. I was getting it for another person that was paying me \$100.

Q. For what other person were you getting it?

A. For Mr. Puter. He told me he was acting as agent for these capitalists, and he said, "You simply mortgage this and you don't appear when the mortgage is due—why, we foreclose."

Q. And you lose your land? A. What?

(Testimony of Luella Ingersoll.)

Q. And you lose your land?

A. Why, that is the way he had of covering it up.

Q. Yes. A. Sure.

Q. That is what I thought.

A. I was to take it for them, and they was to give me \$100. They furnish the money and took a mortgage. He told me this was a mortgage and a copy. I don't know what the copy was.

Q. When did you first hear about Mr. Willd?

A. When Mr. McKinley told me to say I sold it to Mr. Willd.

Q. When was that?

A. That was the day the Government agent came to interview me. I don't remember the date.

Q. About when?

A. Couldn't tell you. It was some time in 1901, but I can't tell you the month or—

Q. Was it before or after you moved to Portland?

[232—64]

A. It was before I moved to Portland. I was still in Albany.

Q. Was Mr. Beeman there with you at that time?

A. No, I was alone in the house.

Q. Was anyone there besides yourself in the house?

A. Just myself when Mr. McKinley came to me, and about two hours after, the special agent came.

Q. And who else came besides the special agent?

A. Mr. Kribs, the special agent's son, and Mr. Horace McKinley.

Q. Was the—how old a man was the son?

(Testimony of Luella Ingersoll.)

A. Oh, I could not tell you.

Q. Oh, approximately?

A. Well, I can't guess on anyone's age. I don't know.

Q. Was he a grown man or a youth?

A. I could not tell you. He didn't look very old. He looked young. A young man. I don't know. A young man, beardless. I couldn't begin to tell you how old he was.

Q. Did he carry a typewriter with him?

A. Yes, sir.

Q. And are you sure Mr. Kribs was there?

A. Yes, sir, Mr. Kribs was there and sat at my right.

Q. Are you as positive about that as you are of other statements that you have made?

A. Why, sure I am. That is the time he gave me \$10 when he came back and asked for a glass of water.

Q. Now, haven't you stated here before that that was \$20? A. No, sir.

Mr. McCOURT.—I object to the counsel trying to fix what the witness said.

Q. I didn't mean on the stand, but before you went on the stand.

A. What would I state it for?

Q. Well, I asked the question. [233—65]

Mr. McCOURT.—I ask counsel to describe the time and place and the persons present when he asks any such question.

Mr. LIND.—If I ask it for the purpose of impeachment I would have to.

(Testimony of Luella Ingersoll.)

COURT.—I think he can ask a witness on the stand on cross-examination whether or not she made a statement.

A. No.

Mr. McCOURT.—I think, if the Court please, that the rule is that in this sort of questions where it is attempted to show a contradictory statement, it is in the nature of an impeachment.

Mr. LIND.—How did I know but what the witness would admit it?

COURT.—I do not so understand the rule.

Mr. McCOURT.—I don't think it is very material.

A. Well, I never said \$20. It was \$10 and Mr. Kribs knows himself. Ask him.

Mr. LIND.—I ask to have that stricken out. It has no place in the record.

Mr. McCOURT.—I object to having it stricken out.

COURT.—I don't think that is a matter of testimony. I will strike it out.

Q. So far as you know, you never signed any deed to Willd, did you? A. What is it?

Q. So far as you know you never executed any deed to Mr. Willd, did you?

A. No, not as I know of. I may have signed a deed. That may have been a deed, but I didn't read it. I was told it was a mortgage and copy. That is what Mr. Puter told me. [234—66]

Q. Did you ever sign a paper at a time when Mrs. Moulton was present and signed it as a witness?

A. I don't remember; I may have. I don't know.

(Testimony of Luella Ingersoll.)

I may have. I don't know.

Q. Didn't you, as a matter of fact, sign a paper in Albany on the 19th of May, after you had returned from Roseburg, at which time Mrs. Moulton was present and signed that paper as a witness?

A. I don't remember of doing anything like that.

Mr. LIND.—I will ask that this paper be marked for identification.

Paper marked "Defense Exhibit 'B' for Identification."

Q. I ask you to look at papers marked "Defense Exhibit 'B' for Identification," and say whether that is your signature appended to it?

A. That looks like it.

Q. Is that your husband's signature?

A. It looks like it. I don't remember.

Q. I mean Mr. Beeman's?

A. It looks like it. I don't remember. It looks like my signature. Marie Ware might have had hold of it; I don't know.

Q. Does that look like Mrs. Moulton's signature?

A. Well, I am not sufficiently familiar with her signature. It may be—may not. I could not tell you, but I am not—

Q. Mrs. Jennie E. Moulton?

A. Yes, I know. I saw that, but I don't know; I couldn't tell you, but that looks like mine; but I don't remember signing it.

Q. Well, will you swear that you didn't sign that paper at Albany that I showed you last?

A. I told you that it looked like my signature, but

(Testimony of Luella Ingersoll.)

I am [235—67] not sure that I signed it. I don't remember it.

Q. Now, who was Mr. Tarpley? This man you referred to—Dan Tarpley—Dan W. Tarpley?

A. I don't know who he is. He is the gentleman that sits over there.

Q. Yes.

A. Did a minute ago. I don't see him now.

Q. Is he a friend of yours?

A. Not personally, no.

Q. Is he an acquaintance of yours?

A. Yes, I know him by sight.

Q. How long have you known him?

A. Oh, I believe—I can't tell you the first time I met him, but I believe it was at Sweet Home one time; but I can't tell the year.

Q. Where is Sweet Home?

A. That is east of Albany.

Q. Is it near the location of these lands?

A. I could not tell you. I never was on the land. I don't know anything about it.

Q. You met him at Sweet Home before you made this claim at Roseburg?

A. I am not sure whether before or after. I could not tell you.

Q. What were you doing at Sweet Home?

A. Looking for—helping to look for a man that was lost in the mountains, which we afterwards found dead—a Mr. Olsen.

Q. You at that time traveled through the timber a good deal?

(Testimony of Luella Ingersoll.)

A. Only looking for Mr. Olsen. I just—

Q. I know. Looking for Mr. Olsen, but nevertheless looking [236—68] for him, it took you through this timber?

A. No, not as I understand. No, it was just in close proximity to Sweet Home. I went on the little trails through, looking in the hunters' cabins with my husband, to see if we could find the man, dead or alive.

Q. Yes, and how long was that before you went to Roseburg, if you remember?

A. I don't remember whether it was before or afterwards.

Q. Do you deny that you stated to Mr. McKinley when you went down to file, on the day before you went down to file on this claim, that you were familiar with that section up there, that you had been up there with your husband? A. Do I deny it?

Q. Yes.

A. Most emphatically. I didn't need to make any such statement, because he told me I could be shown on the timber after I had made filing.

Q. He told you you could be shown the timber after you made the filing? A. Yes.

Q. So you did have a talk with him about that subject matter, did you, before you went to Roseburg?

A. I believe it was on the train that I—now, I am not positive if it was on the train or where, but I do remember saying "Isn't it necessary that we should go on the timber—on the land first?" He said no, he could show me that any time.

(Testimony of Luella Ingersoll.)

Q. Now, how often have you seen Mr. Dan Tarp-
ley since that time when you met him up at Sweet
Home? A. I could not tell you.

Q. You have seen him frequently, have you not?
[237—69]

A. Not very frequently, no.

Q. After you left Albany to live here in Portland,
did you see him at your house? You kept a hotel
here in Portland, did you not?

A. I kept a rooming-house, called the Plaza
Hotel, yes.

Q. A rooming-house called the Plaza Hotel?

A. Yes, roomers, certainly.

Q. During what period did you keep that room-
ing-house?

A. Between—I believe I bought *in* in 1903, and
sold about 1905.

Q. During that time did you meet Mr. Tarpley?

A. I don't remember—no.

Q. Is he living in Portland now?

A. I could not tell you where he is living.

Q. How did you come to see him some two or
three weeks ago on the occasion you referred to?

A. He came to my house.

Q. Had you asked him to come?

A. Why, no.

Q. How is that? A. No.

Q. Why did you hesitate so about telling the
Court about his coming to your house?

A. Will you ask him, if you please? Shall I
tell him?

Mr. McCOURT.—You answer it yourself.

(Testimony of Luella Ingersoll.)

Q. Well, you answer it.

A. What was the question?

Q. Did you answer my question?

A. No, I asked what the question was.

Q. (Read.)

A. I promised him I would not tell.

Q. That was it, was it? That was your sole reason, was it? [238—70] A. My sole reason.

Mr. LIND.—I would like, your Honor, to reserve the right to cross-examine this witness again, if I so desire, and we will let the District Attorney know seasonably—she will remain here for some time, will she not?

Mr. McCOURT.—I would like to have the cross-examination concluded upon this matter.

Mr. LIND.—I will say to the Court frankly any matter upon which I have wholly or partially examined the witness at this time I shall not resume again, but there are matters—proper cross-examination—that I would like to have the privilege of asking her again, not for the purpose of completing anything I have attempted here.

Mr. McCOURT.—No objection.

COURT.—Very well.

Redirect Examination.

Q. Do you remember whether Mrs. Moulton came back to Albany or went on to Seattle after proof was made down there?

Mr. LIND.—Who?

Q. Mrs. Moulton or Miss Moulton—whatever her name was?

A. Well, she was compelled to pass through Al-

(Testimony of Luella Ingersoll.)

bany, but I don't remember whether she stopped off there or not.

Q. Was your husband at Roseburg?

A. No.

Q. Do you recall whether or not those mortgages or deeds which you signed at Roseburg were submitted to your husband for his signature?

A. I don't remember it.

Q. When did you next see Mr. Puter after you saw him at Roseburg?

A. I don't—I don't remember how soon it was. It was when he settled with my husband for the—I can't state positive— [239—71] I am not clear; I can't tell you.

Q. At the time that you recall of next seeing him, was Miss Moulton in Albany?

A. No, I can't remember.

Q. Do you know a man by the name of John Hamlin?

A. No, sir; no. I don't remember that I ever knew.

Q. You were asked a while ago as to a man by the name of A. M. Crawford, whose name appeared upon an instrument submitted to you there.

A. I don't remember him, although the name is familiar; but I can't tell where I heard the name or in connection with what.

Q. Do you know the Attorney General of this State—A. M. Crawford?

A. No, not personally.

Q. You don't know whether he was there about the Land Office on the day you made proof?

(Testimony of Luella Ingersoll.)

A. I do not.

Q. Some question was asked you in reference to Mr. Kribs as to whether or not you secured an introduction to him at that time, there at Roseburg?

A. I don't remember of being asked that question.

Q. I say, did you?

A. I believe Mr. Puter introduced me to him as he passed out. As I remember it, yes.

Q. Now, Peter Buffington—

Mr. McCOURT.—This is a question I should have asked on direct examination.

Mr. LIND.—That is all right. We may want to do the same thing.

Q. Did Mr. Buffington go to Roseburg at the time you went [240—72] to file?

A. I could not tell you when he went. I saw him on the street there.

Q. Where?

A. In Roseburg. I don't know when he went. Don't know whether he went the same train I did or not. I saw him in Roseburg.

Q. How many times? A. Twice.

Q. Where did he live at that time?

A. I could not tell you; I don't know. He was a man—one of the men my husband procured for him.

Q. Were you present when your husband had the conversation and made the arrangements with him?

A. No, no.

Mr. LIND.—Then I ask your Honor that that evidence be stricken out. It is manifestly unfair. I move to strike it out.

(Testimony of Luella Ingersoll.)

Mr. McCOURT.—I asked her if she was present when her husband made the arrangement.

Mr. UELAND.—And she said no.

Mr. McCOURT.—She said no and that ends it.

Mr. LIND.—The whole thing in relation to this man Buffington should be stricken out as mere hearsay. I move to strike it out as mere hearsay and irrelevant in this case.

COURT.—I think the motion will be sustained.

Q. Did you talk to Mr. Buffington yourself about the matter?

A. No. All I know Mr. Beeman—all I know he told me that he procured him.

Q. Did you ever have any conversation with Mr. Buffington himself in relation to the matter?

A. No, no, sir; not that I remember. [241—73]

Mr. McCOURT.—We offer in evidence copies of deed and mortgage which appear to be on record in Linn County, conveying this land from Luella Beeman to Willd and mortgaging from Luella Beeman to Kribs.

Mr. UELAND.—May it please your Honor, we object as immaterial, because there is no issue raised by the answer as to the mortgage or conveyance. We don't think the record should be encumbered by the documents. We have the original documents here, which the District Attorney could have if it was material to have them in the record, but we don't see how it can be material. It has no tendency to prove any charge in the bill.

Mr. McCOURT.—I think they are admissible merely for the purpose of showing the transaction—

(Testimony of Luella Ingersoll.)

that the mortgage was made in connection with the testimony of the witness showing that the mortgage was made immediately following the original agreement; made at the same time and bearing date a few days later.

Mr. UELAND.—The averments of the bill are admitted in the answer.

Mr. McCOURT.—Did you admit it in your answer? I don't recall that you admitted that they were made immediately upon the proof and that the deeds were made immediately, but you admitted the fact that they were made, as I recall it.

Mr. UELAND.—We will find the bill.

Mr. LIND.—These two documents have been referred to in cross-examination, and I think it will be all right to put them in, and we will substitute the originals in place of the certified copies that you have.

Mr. McCOURT.—I don't want him to substitute those originals. The fact of the matter is, while I am introducing [242—74] them in this case, the testimony as it now stands, shows Mr. Beeman never signed these instruments himself at all. Now, if the Court please, I would not object to that upon its failure to transfer title or apparent title, but as an item in the evidence going to show the matter of the conspiracy.

Mr. LIND.—Do you prefer to introduce the copies?

Mr. McCOURT.—Yes, the certified copies.

Mr. LIND.—Then we insist upon our objection. They are irrelevant, but in view of the fact that the original papers have been referred to in connection

(Testimony of Luella Ingersoll.)

with cross-examination, we will allow you to offer them.

Mr. McCOURT.—I don't care to offer them and you can't get them in unless you introduce them by a witness.

Mr. UELAND.—We object as not the best evidence. Certified copy is not the best evidence.

COURT.—The statute makes certified copies competent testimony. The Government is entitled to offer certified copies.

Mr. LIND.—If your Honor is disposed to admit that class of evidence as original evidence without reference to its connection with the testimony, why we don't object to it.

COURT.—They will be admitted as certified copies of public records.

Deed marked "U. S. Exhibit 54."

Mortgage marked "U. S. Exhibit 55."

COURT.—Do your pleadings refer to all these?

Mr. McCOURT.—Not by date, but as having been made directly after proof in furtherance of the original conspiracy charged.

Mr. LIND.—They are not designated.

Witness excused. [243—75]

[Testimony of Mrs. C. E. Lovejoy, for the
Government.]

Mrs. C. E. LOVEJOY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

What is your name? A. Mrs. Lovejoy.

(Testimony of Mrs. C. E. Lovejoy.)

Q. Where do you live, Mrs. Lovejoy?

A. Astoria.

Q. Where did you live in the year 1900? I refer more particularly to the months of January, February, March and April.

A. I lived in Albany.

Q. You know Mrs. Luella Beeman?

A. Yes.

Q. Do you know S. A. D. Puter?

A. Yes.

Q. Daniel W. Tarpley? A. Very slightly.

Q. Horace G. McKinley? A. Yes.

Q. Do you know Frederick Kribs? A. No.

Q. You don't know him? Do you recall the incident of having made a filing upon a timber claim in January or February of 1900? A. Yes.

Q. Tell the Court what induced you to make the filing.

Mr. LIND.—I would a little rather she would state the facts, your Honor, in regard to it.

COURT.—She may state how she came to make the filing. I suppose that is what he is trying to get at.

A. Mrs. Beeman told me that if I filed on the claim I would get \$100 for it.

Q. Did she state where the \$100 would come from? [244—76] A. Yes.

Q. Where did she say?

Objected to as incompetent and hearsay.

COURT.—I think you can show what she did, and from whom she received the \$100, but I do not think Mrs. Beeman's statement to her as to who would give

(Testimony of Mrs. C. E. Lovejoy.)

her the \$100 would be vital in this suit.

Mr. McCOURT.—Mrs. Beeman has already testified that Mr. Puter employed her.

COURT.—I know she testified that she procured this witness to make the filing at Puter's request. What she may have told this witness as to what Puter would do would be hearsay.

Q. What did you do, then?

A. I went to Roseburg to file on the claim.

Q. Was Mr. Puter there? A. Yes.

Q. When you went to file?

A. No, I think not. I thought that he was, but they told me that he was not there. That is as near as I can remember.

Q. What is your recollection?

A. I can't remember, but I thought that he was; and it seems to me yet that he was there. They say that he was not there.

Q. Do you recall whether Mr. McKinley was there? A. Yes, Mr. McKinley was there.

Q. Well, after you filed on the land, what did you do? Where did you go to?

A. Well, I went back to Albany.

Q. Then, what next occurred in the transaction?

A. In that transaction, the next that occurred was we went [245—77] down to Roseburg to prove up, or to prove on it.

Q. Where did you go from to Roseburg?

A. I went from Seattle to Roseburg.

Q. How did you get information that it was time to prove up?

A. Mr. McKinley telephoned to me at Seattle.

(Testimony of Mrs. C. E. Lovejoy.)

Q. From where? A. From Salem.

Q. And how long was that before you went to Roseburg?
A. The day before I went.

Q. Well, when you got to Roseburg, what occurred?
A. We went to the land office.

Q. And what did you do?

A. I don't know—I suppose that we proved up on the claim.

Q. Well, how did you do that? Just tell the Court how that was done, as you recall it.

A. Well, I was asked to swear, and I don't know what I swore to.

Q. Did you sign anything?

A. I can't remember of signing anything in the land office.

Q. Did you sign anything anywhere?

A. I can remember of signing a paper.

Q. Where?

A. When I received the \$100. And I don't know where that was, unless it was in—it was not in the land office, though.

Q. When you were making proof there, who was present, if you recall, that you knew?

A. Mrs. Beeman, Mr. Puter, and that is all that I knew, was present. [246—78]

Q. Was there anyone else there? A. Yes.

Q. How many other persons?

A. I don't know. I can't remember at all.

Q. About how many?

A. Well, I have not the slightest idea how many there were there.

Q. Well, were there any others?

(Testimony of Mrs. C. E. Lovejoy.)

A. There were others, yes.

Q. Well, now, who was it gave you the \$100?

A. Mr. Puter.

Q. Do you remember where it was he gave it to you?

A. It seems to me, as near as I can remember, it was in a room in the hotel.

Q. Who was present when he gave you the money? A. Mrs. Beeman.

Q. What sort of money did he give you?

A. A bill, or bills.

Q. Do you know who paid for the land?

A. No.

Q. Did you pay your expenses down there on either trip?

A. I paid my way back to Seattle, but my way was paid from Seattle to Roseburg.

Q. By whom, do you know?

A. By Mr. McKinley.

Q. Your first trip up there, who, if anybody besides yourself, paid your expenses?

A. Well, I don't know who paid it, but it was all—it was paid. Now, that is all I know about it.

Q. Who paid your hotel bill and other expenses besides [247—79] traveling?

A. It was paid the same way; somebody paid it.

Q. Do you know what those instruments or papers were that you signed there after you left the land office? A. No, I didn't know what they were.

Q. Did anyone state what they were?

A. No, I don't think they did.

Q. Who gave you the papers to sign?

(Testimony of Mrs. C. E. Lovejoy.)

A. Mr. Puter.

Q. Was anyone present besides yourself and Mrs. Beeman and Puter?

A. I can't think there was—I don't think there was. I can't think of any one.

Q. What did you understand was to become of this timber claim, when you first started into it, and before you filed?

Mr. LIND.—Wait a moment. From whom? I think that is too general, your Honor—hardly fair to the defendants.

COURT.—She may state what she intended to do with it, what her understanding was about it.

A. I filed on the claim for the \$100. I didn't know what was going to become of the land afterwards.

Q. How is that?

A. I didn't know what was to become of the land.

Q. Did you understand that you were going to have the land to keep it? A. No.

Q. Well, what did you understand as to what was to become of the land?

A. Well, I didn't think anything about it.

Q. I will ask you if you had anything, yourself, to do with [248—80] advertising the proof—advertising the notice in the newspaper in regard to the time of proof? A. No.

Q. Do you know whether or not you ever deeded this land to anybody?

A. No, I don't know that.

Q. Where did you go after you left Roseburg from making that proof?

(Testimony of Mrs. C. E. Lovejoy.)

A. Back to Seattle.

Q. Did you stop at Albany? A. No.

Q. Sure of that? A. Sure of it.

Q. When were you next in Albany after that?

A. Well, it was many months. I don't know just when I was there again.

Q. Was Mr. Beeman in Roseburg? A. No.

Q. Did you see him on that occasion at all?

A. No.

Q. How long after that was it before you saw Mr. Beeman?

A. Oh, I cannot say; I don't know.

Q. Did you ever see him since?

A. Yes, I have seen him since then.

Q. About how long after that time was it?

A. I think it was about a year after that, that I was back to Albany.

Q. What was your name at that time, Mrs. Lovejoy? A. Mrs. G. L. Moulton.

Q. G. L. or J. L.? A. G. L.

Q. Your name appears as Jennie, does it not?

A. Oh, yes, that is the way I signed my name, as Jennie [249—81] Moulton.

Q. Were you married at that time? A. Yes.

Q. Where was your husband?

A. In Albany.

Q. Do you know A. M. Crawford? A. No.

Q. John Hamlin? A. No.

Q. Did you ever see any such persons when you were there? A. No.

Q. In connection with signing the papers that Mr. Puter gave you?

(Testimony of Mrs. C. E. Lovejoy.)

A. No, not that I remember of. I might have.

Q. How many days did you stay in Roseburg?

A. I think we were there 24 hours about.

Q. I will ask you whether or not you saw Horace G. McKinley at that time? A. Yes.

Q. Where?

A. At the hotel, and at the Land Office.

Q. Did you have any conversation with either Puter or McKinley before going into the Land Office to make your proof?

A. No, I don't think I did.

Q. State whether or not you were given any instructions, either by Puter or McKinley, as to the testimony you should give in your proof.

A. No.

Mr. LIND.—That is leading. Well she already [250—82] has answered it.

Q. I will ask you if you ever signed any instruments in connection with that transaction except that one time, the day you made proof there?

A. Not that I remember of.

Q. Have you ever seen any of the parties—Puter, McKinley, Tarpley or Kribs in connection with the matter since that time? A. No.

Mr. McCOURT.—I offer in evidence certified copy of the record of a mortgage purporting to have been made by Jennie Moulton to Frederick A. Kribs on the 16th day of May, 1900, and recorded on May 18, 1900.

Mr. LIND.—Well, do you really think it is important to incumber the record with these things that are admitted?

(Testimony of Mrs. C. E. Lovejoy.)

Mr. McCOURT.—I think it is important to show that there was a mortgage and a deed absolute given at the same time, on the same date, relative to the same transaction—one dated one day, one dated a few days later—in connection with the allegations of fraud contained in the complaint.

COURT.—Let it be admitted. The witness testified she signed all these papers at the time she made final proof.

Mr. McCOURT.—Yes.

Marked “U. S. Exhibit 56.”

Mr. McCOURT.—Then I wish to offer the deed, which purports to have been dated on the 19th day of May, and recorded upon the 21st day of May—both certified [251—83] copies of the record.

Marked “U. S. Exhibit 57.”

Cross-examination.

(Questions by Mr. LIND.)

Mrs. Moulton, you were living—that is, at the time this entry was made, your name was Miss Moulton?

A. Mrs. Moulton.

Q. Mrs. Moulton? A. Yes, sir.

Q. You were then living at Albany?

A. Yes.

Q. Who was the first person that ever spoke to you about filing this claim? A. Mrs. Beeman.

Q. Did you ever have any talk with anybody except Mrs. Beeman on the subject? A. No.

Q. Never anywhere?

A. She and Mr. Beeman. I talked to them about it.

Q. You talked a good deal with Mr. Beeman, did

(Testimony of Mrs. C. E. Lovejoy.)

you not? Did you talk a good deal with Mr. Beeman about it?

A. Not any more than I did with Mrs. Beeman, and not as much.

Q. On more than one occasion?

A. Well, I stayed at their house a great deal.

Q. And that is how this matter came up?

A. Yes.

Q. Did you stay at their house most of the time when you were in Albany?

A. When I was in Albany, yes.

Q. You stated that during the months of January, February, [252—84] March and April of that year you were in Albany most of the time?

A. Yes.

Q. How did you happen to be at Seattle?

A. I went to Seattle on a visit.

Q. Did you remain long in Seattle?

A. Well, I stayed in Seattle from that time on for six years.

Q. Continuously?

A. No. I was to and from Albany and back to Seattle.

Q. At different times? A. Yes.

Q. Did you ever have any talk with Mr. McKinley about this claim? A. No, I did not.

Q. Do you remember when you first went to Roseburg to make your filing?

A. I remember when I went.

Q. You remember when you went?

A. I don't remember any dates. I don't remember the times.

(Testimony of Mrs. C. E. Lovejoy.)

Q. No. But you remember the occasion?

A. Yes.

Q. Did you see Mr. McKinley on that occasion?

A. Yes.

Q. Did you have any talk with him about this matter? A. No.

Q. And then when you went to prove up, you saw Mr. Puter? A. Yes.

Q. Did you have any talk with Mr. Puter, before you proved up? A. No. [253—85]

Q. You say you did have some talk with him afterwards in a room in the hotel? A. Yes.

Q. Who were present at that time?

A. Mrs. Beeman and Mr. Puter is all I can remember. If there was anyone else, I don't remember.

Q. You don't recall? A. No.

Q. What was the talk about, mortgage or mortgages?

A. There was no talk about mortgages.

Q. No talk about mortgages? A. No, sir.

Q. Any talk about deeds? A. No.

Q. Did you sign any mortgage or deed that you remember?

A. I signed a paper—signed my name to something.

Q. Did you ask what it was? A. No.

Q. Did you look to see what it was?

A. No.

Q. Did you sign any papers as a witness?

A. Not that I remember of.

(Testimony of Mrs. C. E. Lovejoy.)

Q. Did anybody sign any papers as a witness for you?

A. Well, I don't just remember whether I did or not.

Q. As a matter of fact, you don't remember much about what did happen? A. No, I don't.

Q. Or what was said or what was done?

A. No, I don't remember very much about it.

Q. And since then, you have seen nobody in connection with this matter, have you? A. No.

Q. I guess that is all.

Mr. McCOURT.—One or two questions that are more in the nature of direct, that I overlooked.

[254—86]

(Examination by Mr. McCOURT.)

Q. I will ask you if you ever visited the land upon which you filed, Mrs. Lovejoy? A. No.

Q. Do you know where the land was, or is?

A. No, I don't know where it is.

Q. Did you stop anywhere in Oregon after you left Roseburg on your way to Seattle?

A. I stopped at Portland.

Q. How long?

A. I arrived in Portland at 7 o'clock, and I left at 2,—2 o'clock, I think.

Q. In the morning?

A. Seven in the morning, and left at 2 in the afternoon.

Q. Did you see Mr. Puter or Mr. McKinley?

A. I saw them, but I didn't speak to them.

Q. Did they come on the same train that you did?

(Testimony of Mrs. C. E. Lovejoy.)

A. Mr. Puter did. I don't remember seeing Mr. McKinley.

Q. In that meeting that you had in the hotel there, when you got the \$100, did you have any dispute with Mr. Puter about the money you should receive? A. Yes.

Q. What was that?

A. He wanted to hold out what he had paid for my ticket from Seattle—from Seattle down to Portland. I said "No, I want the \$100." And he gave it to me, but he refused to buy me a ticket back to Seattle.

Q. Where did he buy you a ticket to?

A. Portland.

Q. Was that before or after you had signed the papers? A. After I had signed the papers.

[255—87]

Q. How long after?

A. Very few minutes after.

Q. Well, how long was that after you had made your proof in the Land Office?

A. About four or five hours, as near as I can remember. It was in the same afternoon.

Q. Did you see Mr. Kribs there at that time?

A. Not that I remember of.

Q. You did not receive any introduction to him?

A. I cannot remember of receiving an introduction to Mr. Kribs.

(Examination by the COURT.)

Q. Mrs. Lovejoy, am I right in understanding that you went from Roseburg, after you made your final proof, direct to Seattle? A. Yes.

Q. And what time did you return to Albany?

(Testimony of Mrs. C. E. Lovejoy.)

A. Well, I didn't come back to Albany for several months.

Q. I understood you to say that you were in Albany in March and April of 1900.

A. I don't remember saying that, and I don't remember whether I was or not.

Q. Well, I understood you, in answer to a question of counsel, to say you were in Albany in January, February, March and April. This final proof was made on the 26th of February.

Mr. McCOURT.—No, the 16th of May. It was the filing that was made on the 26th of February. The filing was made on the 26th of February.

COURT.—Then that is my mistake. I thought the final proof was made on the 26th of February. [256—88]

Mr. McCOURT.—No, the 16th of May, was when the final proof was made.

Redirect Examination.

Q. How long before this final proof was it that you had gone to Seattle?

A. As near as I can remember, about a month. I can't just remember.

Q. And how long was it after you had made your filing that you went to Seattle, as you recall it?

A. I went right directly to Seattle.

Q. After you had made your filing, I mean?

A. Well, I can't tell. I don't remember when I went.

Witness excused.

Whereupon proceedings herein were adjourned until to-morrow morning at 10 o'clock. [257—89]

[Proceedings Had at] Portland, Or., April 20, 1910,
10 A. M.

Mr. McCOURT—If the Court please, in order to expedite matters, I would like the record to show, in a concrete form, this list of entries, which we claim are connected with the entries in question here, and include them, showing the addresses of the parties, and the fact that a contest was filed, by the Northern Pacific Railroad Company against those lands, afterwards relinquished, and also showing in groups the dates upon which filings were made. I have them classified here, and I imagined that counsel would consent, probably, to have them put into the record much as I have them here, because they would then be presented to the Court without the necessity of going through them and picking out as to residence and groups and entrymen, and the other transactions. They are taken from the Land Office records. We have the records here, and we have the officer. It would take a day pretty near to go through it, and it would only take about fifteen minutes if it may be done in this way.

Mr. LIND.—Your Honor, we have no objection to any group of the entries involved in the suit that would facilitate a better understanding of the evidence and of the issues, but we certainly shall object to going into the consideration of other entries, or alleged entries, not involved in the suit. There is no allegation of conspiracy on the part of the defendants in respect of any other matter than that involved in the suit. And the Supreme Court of the United States has expressly [258—90] passed on this ques-

tion. My recollection is that it is in the Budd case, that other alleged fraudulent entries are not admissible, cannot be inquired into in a proceeding of this character.

COURT.—Well, the district attorney can offer them for identification, and that question can be considered hereafter, if they become material.

Mr. McCOURT.—What I desired to do, if the Court please, was to name over the persons, with their addresses and the land entered, as shown by the Land Office records, with the number of the Timber and Stone Sworn Statements. Now, then, the evidence that we will introduce hereafter will show that all together these parties made fifty-seven entries, or had them made; that the Northern Pacific Railroad Company about as they made the filings, or shortly after they made the first filing, filed a contest notice against them, alleging that the entries were fraudulent. In the controversy that ensued, Horace McKinley was arrested, and as they appeared down in Roseburg to make proof, most of the defendants being there, or a great many of them being there, and among them Mr. Kribs and Mr. Puter, the hearing was had, and an agreement was arrived at with the Northern Pacific Railroad Company, whereby these people agreed to secure twenty-four relinquishments; that is, let go of twenty-four claims they were claiming, and let the Northern Pacific Railroad Company take them. Now, that is admissible for the purpose of showing notice, if nothing else, to the defendant Kribs, and from him to the defendant Smith, as we expect to connect them up later. So that for

that purpose, the fact of those entries is admissible.

[259—91]

COURT.—The alleged fraudulent character of the entries now in controversy?

Mr. McCOURT.—Yes, together with the others all in the same group and transaction. And without putting in all of these Land Office records and calling attention to the books here, I thought, if counsel would permit me, to read into the record what the books show. They may have the privilege of verifying them, because we have the books here.

Mr. LIND.—If it is the intention of the District Attorney to dispense with the record evidence, by reading an abstract on the question of fraud into the record, I cannot consent, because if fraud is to be predicated on this, then, the full data should go in. Whereas, a mere tabulation for the convenience of the Court and counsel, there is no objection to. Now, if the Court will pardon me a moment, that I may have a conference with the District Attorney?

COURT.—Yes.

(Counsel confer together.)

Mr. McCOURT.—Counsel have agreed that the matter which I desired to read into the record may be read into it subject to their objection as to those entries not involved in the suit.

COURT.—Very well.

Mr. LIND.—Yes. On the ground that as to those entries it is incompetent and irrelevant and hearsay.

COURT.—Very well. I will let it in subject to the objection, and you may save the question.

Mr. LIND.—Yes.

COURT.—Mr. McCourt, does this list include any [260—92] that were offered yesterday?

Mr. McCOURT.—It includes the entire list that was offered yesterday, as well as the others, giving the names and descriptions. I was going to give them in a tabulated form, so it will appear in the record in concrete shape, and it will save a great deal of going back and examining the records hereafter. The Timber and Stone Sworn Statements are as follows: No. 762, Josephine Jacobs, Portland, southeast quarter of section 22, township 14 south, range 3.

Mr. LIND.—Instead of reading that into the record, why can't the stenographer copy that at her convenience?

Mr. McCOURT.—I think she can when I read to the fourth one, and designate what it means here, she can copy from that time on.

COURT.—Very well.

Mr. McCOURT.—Relinquished the 3d day of January, 1903, re-entered the 3d day of January, 1903. No. 763, Sadie E. Puter, Portland, northeast quarter of section 20, township 14 south, range 3. No. 764, Elvira Jacobs, northwest quarter of section 22, township 14 south, range 3. No. 765, Mattie McDaniel, Portland, southeast quarter of section 20, township 14 south, range 3, relinquished April 19, 1900, selected by Northern Pacific Railroad Company the 23d day of April, 1900.

Now, for the stenographer's information, from that point on, the right-hand column of figures indicate selection by the Northern Pacific Railroad Com-

pany of the several selections, and may be copied from this list. [261—93]

[List of Timber and Stone Sworn Statements.]

COURT.—Furnish counsel for the defendants with a copy.

Mr. McCOURT.—Yes.

No.	Name.	Address.	Description.
762A	Josephine Jacobs°	Portland	SE. 1/4-22-14-3 Rel. 1/13/03-1/3/03
763A	Sadie E. Puter	"	NE. 1/4-20-14-3
764A	Elvira Jacobs	"	NW. 1/4-22-14-3
765A	Mattie McDaniel*	"	SE. 1/4-20-14-3 Rel. 4/19/00-4/23/00
766A	Clarence Lerwill*	Monroe	NE. 1/4-24-14-2 Rel. 4/19/00-4/23/00
767A	C. Frank Starr*	Salem	NE. 1/4-28-14-3 Rel. 4/19/00-4/23/00
768A	Basil H. Wagner°	"	SW. 1/4-28-14-3
769A	H. C. Barr-	Albany	SE. 1/4-24-14-2
770A	S. A. D. Puter	Portland	NW. 1/4-20-14-3
771A	W. J. Drinkard*	Halsey	SE. 1/4-28-14-3 Rel. 4/19/00-4/23/00
772A	Claude D. Lee*	Junction Cy.	NW. 1/4-24-14-2 Rel. 4/19/00-4/23/00
773A	Charles F. Smith*	Roseburg	NE. 1/4-32-14-3
774B	Chas. Brochett*	Salem	NW. 1/4-32-14-3 Rel. 4/19/00-4/23/00
775B	Walter Boone*	Roseburg	SE. 1/4-32-14-3 Rel. 4/19/00-4/23/00
776B	Jennings F. Whitney*	Roseburg	SW. 1/4-32-14-3 Rel. 4/19/00-4/23/00
777B	John J. Jaggy-	Roseburg	SE. 1/4-34-14-3
778B	Edmond E. Archambeau*	Roseburg	NE. 1/4-33-14-3 Rel. 4/19/00-4/23/00
779B	Neal Dozier	Roseburg	SW. 1/4-34-14-3
780B	Zebulin Smith	Roseburg	NW. 1/4-34-14-3
782C	Thomas Wilson	Roseburg	NW. 1/4-28-14-3
783D	Anthony T. Thompson*	Roseburg	NW. 1/4-30-14-3 Rel. 4/19/00-4/23/00
784D	Enos Conn*	Roseburg	SE. 1/4-30-14-3 Rel. 4/19/00-4/23/00
785D	E. C. Brandeberry*	Albany	SE. 1/4-33-14-3 Rel. 4/19/00-4/23/00
786D	C. I. Barr*	Albany	SW. 1/4-33-14-3 Rel. 4/19/00-4/23/00
787D	Charles Farrell*	Albany	NW. 1/4-33-14-3 Rel. 4/19/00-4/23/00
788D	Vicie A. Lunn@	Salem	NE. 1/4-22-14-3 Can. 4/23/00-4/23/00
789D	H. George Meyer@	Salem	SW. 1/4-22-14-3 Can. 4/23/00
790D	Carrie L. Meyer@	Salem	NE. 1/4-30-14-3 Can. 4/23/00-4/23/00
797E	John L. Green	Salem	NW. 1/4-35-14-3
798E	Jay S. Phillips	Salem	NE. 1/4-34-14-3
799E	Charles Burley	Salem	SE. 1/4-35-14-3
800E	Charles Barr	Salem	SW. 1/4-35-14-3
801E	Edward Finley	Salem	NE. 1/4-35-14-3
802E	Sell Finley*	Salem	SW. 1/4-30-14-3 Rel. 4/19/00-4/23/00
803E	Rufus Drum°	Albany	SW. 1/4-24-14-2
804F	John Pilkington*	Roseburg	NE. 1/4-26-14-3 Rel. 4/19/00-4/23/00
805F	Lee Minard*	Roseburg	SW. 1/4-26-14-3 Rel. 4/19/00-4/23/00
806F	James H. Doty*	Roseburg	NW. 1/4-26-14-3 Rel. 4/19/00-4/23/00
814F	Douglas Adkinson	Roseburg	SW. 1/4-24-14-3
815F	Ira A. Pilkington°	Roseburg	SE. 1/4-26-14-3
816F	Harry Saltmarsh	Albany	NW. 1/4-24-14-3
867G	Jennie Moulton	Albany	E. 1/2, W. 1/2 SE-14-4
868G	Luella Beeman	Albany	Lot. 4-S. 1/2 SE. 1/4-31-SW. 1/4 SW. 1/4-32-14-4
869G	George L. Thompson	Albany	NW. 1/4-14-14-3
870G	Isaac R. Borum	Albany	SW. 1/4-14-14-3
871G	Benjamin F. Kirk	Albany	NE. 1/4-14-14-3
872G	Benjamin F. Snyder*	Salem	SE. 1/4-24-14-3 Rel. 4/19/00-4/23/00
873G	Hugh Blakely	Brownsville	Lot 4-N. 1/2 SE. 1/4-30-SW. 1/4 SW. 1/4-29-14-4
874G	James P. Cooley	Brownsville	Lot 3-N. 1/2 SE. 1/4-31-NW. 1/4 SW. 1/4-32-14-4

No.	Name.	Address.	Description.
875G	Frank W. Burford	Brownsville	Lot 2-S. 1/2 NE. 1/4-31-SW. 1/4 NW. 1/4-32-14-4
876G	John Harrison	Brownsville	Lot 1-N. 1/2 NE. 1/4-30-NW. 1/4 NW. 1/4-29-14-4
877G	Robert S. Henderson*	Salem	NE. 1/4-24-14-3. Rel. 4/19/00-4/23/03
878G	Henry B. Blakely	Brownsville	Lot 3-N. 1/2 SE. 1/4-30-NW. 1/4 SW. 1/4-29-14-4
879G	Peter Buffington	Albany	SE. 1/4-14-14-3
880G	Jacob W. Stilwell	Brownsville	Lot 1-N. 1/2 NE. 1/4-31-NW. 1/4 NW. 1/4-32-14-4
881G	Frank J. Harrison	Brownsville	Lot 2-S. 1/2 NE. 1/4-30-SW. 1/4 NW. 1/4-29-14-4
882G	Elam Miller	Albany	NE. 1/4-31-14-3

Note: Address that of record when filed.

* Relinquished to Northern Pacific.

@ Cancelled for failure to make proof.

° Not involved in this case.

- Dead.

Mr. McCOURT.—Now, then, the groups of filings as they appear by dates may also be copied by the stenographer.

COURT.—Those are the filings involved in 3320?

Mr. McCOURT.—No, those are the filings involved in the entire fifty-seven cases, the dates when they were made.

COURT.—I mean in Suit 3320.

Mr. McCOURT.—3320, including the twenty-four that were relinquished.

COURT.—Very well.

[Statement of Groups of Filings.]

“A”

January 19, 1900.

—Barr, H. C.

*Drinkard, W. J.

Jacobs, Elvira S.

°Jacobs, Josephine

*Lee, Claude D.

*Lerwill, Clarence

*McDaniel, Mattie

Puter, S. A. D.

Puter, Sadie
*Smith, Charles F.
*Starr, C. Frank
°Wagner, Basil

“B”

January 20, 1900.

*Archambeau, Edmond L.
*Boone, Walter
*Brochett, Charles
Dozier, Neal
-Jaggy, John J.
Smith, Zebulin
*Whitney, Jennings F.

“C”

January 22, 1900.

Wilson, Thomas

[263—95]

“D”

January 23, 1900.

*Barr, C. I.
*Brandeborg, E. C.
*Conn, Enos
*Farrell, Charles
@Lunn, Vicie A.
@Meyer, Carrie L.
@Meyer, H. George
*Thompson, Anthony L.

“E”

January 31, 1900.

Barr, Charles
Burley, Charles
Drum, Rufus
Finley, Edward

*Finley, Sell
Green, John L.
Phillips, Jay S.

“F”

February 1, 1900.

Adkison, Douglas
*Doty, James H.
*Minard, Lee
*Pilkington, John
Pilkington, Ira
Saltmarsh, Harry

“G”

February 26, 1900.

Beeman, Luella
Blakely, Henry B.
Blakely, Hugh
Borum, I. R.
Buffington, Peter
Burford, Frank W.
Cooley, James P.
Harrison, Frank
Harrison, John
*Henderson, Robert S.
Kirk, Benjamin F.
Miller, Elam
Moulton, Jennie
*Snyder, Benjamin F.
Stilwell, Jacob W.
Thompson, George L.

-Dead.

*Relinquished prior to proof.

°Patents not issued.

@ Failed to submit proof, cancelled.

Mr. McCOURT.—And the next matter that I want to put into the record in similar shape was the dates of proofs. The persons making the proofs showing the dates upon which they made them. Those are merely those involved in this case.

Mr. LIND.—That is already in evidence.

Mr. McCOURT.—Yes. It is really in the record, but I ask the privilege of putting it there so we can refer to it.

[Statement of Dates of Proofs.]

“1”

April 18, 1900

Adkinson, Douglas
 Barr, Charles
 -Barr, Harry C.
 Burley, Charles
 Dozier, Neal
 Finley, Edward
 Green, John L.
 -Jaggy, John J.
 Phillips, Jay S.
 °Pilkington, Ira
 Puter, S. A. D.
 Puter, Sadie E.
 Saltmarsh, Harry
 Smith, Zebulin
 Wagner, Basil
 Wilson, Thomas

“2”

April 19, 1900.

°Drum, Rufus
 Jacobs, Elvira S.
 °Jacobs, Josephine

“3”

May 16, 1900.

Beeman, Luella

Blakely, Henry B.

Blakely, Hugh

Borum, Isaac R.

Buffington, Peter

Burford, Frank

Cooley, James P.

°Harrison, Frank

Harrison, John

Kirk, Benjamin F.

Miller, Elam

Moulton, Jennie

Stilwell, Jacob W.

Thompson, George L.

-Dead.

°Not involved in case.

[265—97]

Mr. McCOURT.—Now, then, in regard to the proof matters, I would like to show the fees collected upon the dates of proofs for the several entries by the Land Office, as shown by their records, to be later followed showing who paid it.

COURT.—Very well.

Mr. LIND.—That there will be no dispute about, as far as that is concerned. It was all paid out by checks.

Mr. McCOURT.—You have them?

Mr. LIND.—Yes, we have them. There will be no controversy about it.

Mr. McCOURT.—Well, I can forego that for the

present, although something ought to appear in the record to show the amounts and show that the check really checked the amount.

Mr. LIND.—You better put it in. I have not discussed it with my client.

Mr. McCOURT.—I will merely hand this to the stenographer and ask her to put it in, with the exception of some memorandum I have on the right-hand column.

Mr. LIND.—There is no objection.

[266—98]

[Statement of Fees Collected.]

April 18, 1900.

Cert.	Purchaser.	Price.	Fees.
8168	S. A. D. Puter.....	\$400.00	\$23.77
8169	Ira A. Pilkington.....	400.00	10.73
8170	John L. Green.....	400.00	10.95
8171	Thomas Wilson.....	400.00	10.74
8172	Chas. Barr.....	400.00	10.70
8173	Charles Burley.....	400.00	10.70
8174	Neal D. Dozier.....	400.00	10.62
8175	Basil H. Wagner.....	400.00	10.95
8176	Harry Saltmarsh.....	400.00	10.64
8177	Harry C. Barr.....	400.00	10.70
8178	Edward Finley.....	400.00	10.65
8179	John J. Jaggy.....	400.00	10.65
8180	Jay S. Phillips.....	400.00	10.76
8181	Zebulin Smith.....	400.00	10.75
8182	Douglas Adkinson.....	400.00	10.62
8183	Sadie Puter.....	400.00	10.57
		<hr/>	
		\$6400.00	\$184.50
		184.57.	
		<hr/>	
	Total....	\$6584.57	

April 19, 1900.

8184	Josephine Jacobs	\$400.00	\$10.45
8185	Rufus Drum	400.00	10.51
8186	Elvira S. Jacobs.	400.00	10.75
		<hr/>	<hr/>
		\$1200.00	31.71
		31.71	
		<hr/>	<hr/>
	Total	\$1231.71	

May 16, 1900.

8231	Isaac R. Borum	\$400.00	\$10.45
8232	Benj. F. Kirk	400.00	10.45
8233	George L. Thompson	400.00	10.44
8234	Peter Buffington	400.00	10.43
8235	John Harrison	426.48	10.52
8236	Jennie Moulton	400.00	10.43
8237	Frank J. Harrison	426.63	10.51
8238	James B. Cooley	427.40	10.49
8239	Jacob W. Stilwell.	427.08	10.47
8240	Luella Beeman	427.58	10.44
8241	Henry Blakely	426.78	10.51
8242	Hugh Blakely	426.93	10.45
8243	Elam Miller	400.00	10.38
8244	Frank W. Burford	427.25	10.49
		<hr/>	<hr/>
		\$5,816.13	\$146.46
		146.46	
		<hr/>	<hr/>
	Total	\$5,962.59	

[267—99]

Mr. McCOURT.—Now, then, I would like to have it stipulated into the record that the Northern Pa-

cific Railroad Company, prior to April 18, 1900, and after the filings were made of the entries involved in this case, filed a contest by Thomas Cooper, its land agent, against each and every one of the entries, and that on or about the 18th day of April, and the first day of May, the Northern Pacific Company dismissed its contest as to thirty-three of the entries, including the twenty-eight, or such a matter, that are included in this case.

Mr. LIND.—I don't know anything about the facts, except as I believe some things.

Mr. McCOURT.—I have the record here showing that.

Mr. LIND.—Just a moment. Let me see what you have in that record, whether it will shorten the record.

Mr. McCOURT.—Yes, I have the contest affidavit in the case here and here is the record as shown by the contest docket. That is one. They are all alike. Counsel suggests that we present that matter in the form of a stipulation, that we may agree upon in written form a little later during the day.

COURT.—Very well.

Mr. McCOURT.—And for the purpose of the testimony of other witnesses, it may be considered as available as though it was already shown, by reference to this record. [268—100]

[**Testimony of Thomas R. Wilson, for the
Government.**]

THOMAS R. WILSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Wilson?

A. Salem, Oregon.

Q. How long have you lived at Salem, Mr. Wilson?

A. Seven years.

Q. Where did you live before you went to Salem to reside?

A. Portland.

Q. What was your business in Portland?

A. I was connected with the Southern Pacific News Company.

Q. What has been your business since you resided in Salem?

A. Accountant. Bookkeeper.

Q. At what institution?

A. At the Penitentiary.

Q. Do you know Horace G. McKinley?

A. I do.

Q. How long have you been acquainted with him?

A. Ten or eleven years.

Q. And do you know S. A. D. Puter?

A. Yes.

Q. Dan. W. Tarpley?

A. I do.

Q. How long have you known them?

A. I have known Tarpley about the same length of time, and Puter probably six or eight months later.

(Testimony of Thomas R. Wilson.)

Q. Do you recall the incident of making a filing upon a timber claim in Linn County in the year 1900?

A. I do.

Q. State to the Court the circumstances under which you made the same, and leading up to making thereof.

A. Well, I was acquainted with McKinley and Tarpley, and Mac told me that he was going to take up some timber claim.

Mr. LIND.—I did not hear the last.

A. I was acquainted with McKinley and Tarpley, very well acquainted with them; and Mr. McKinley asked me if I wanted to file on a timber claim. I told him I would. The time came, and he told me to go to Roseburg. We went to Roseburg together, and I filed on a claim down there. I have forgotten now—I was to receive all expenses, and I think it was either \$75.00 or \$100. I would not be sure what I got. It was either one or the other, my expenses were paid to Roseburg and back.

Q. Well, that was for filing?

A. That was filing?

Q. Then what later occurred?

A. Well, we went back. I don't know exactly how long it was afterward—probably a month or two, went back and made the final proof. My expenses were paid.

Q. Do you know who had the notice of proof published? A. I do not.

Q. Did you? A. No.

Q. How did you ascertain when it was time to go back to [270—102] Roseburg to make proof?

(Testimony of Thomas R. Wilson.)

A. Mr. McKinley notified me.

Q. How? A. Verbally.

Q. Where were you then living?

A. Portland.

Q. Where did you make proof?

A. I think it was Roseburg.

Q. Was there any one else making proof there upon that day?

A. Mr. Wagner, I believe was the only one that I knew.

Q. Basil H. Wagner? A. Yes.

Q. What time of day did you make proof?

A. I don't know what time of day it was. Along in the afternoon, probably. I don't know for sure.

Q. State whether or not Mr. McKinley or Mr. Puter or Tarpley were there?

A. Mr. McKinley was there I think. Mr. Tarpley also.

Q. Well, what occurred after you had gotten your proof made in the Land Office?

A. We came back to Portland.

Q. Anything else in connection with the entry?

A. I don't understand, what part—what did we do in connection with the entry?

Q. Yes, anything you did in connection with the entry right after you made proof, or soon after?

A. I don't remember anything specially, no.

Q. Well, did you sign any papers of any kind?

A. I don't know whether I signed the papers in Roseburg or Portland. I cannot recall the date when I signed. It was supposed to be a deed or mortgage. [271—103] I don't know which it was. I

(Testimony of Thomas R. Wilson.)

can't recall whether I signed it in Roseburg or Portland.

Q. In whose presence did you sign it?

A. I don't know—don't remember.

Q. Well, what occurred when you did sign it?

A. Well, that finished the deal, I guess.

Q. Well, was there anything paid you?

A. I got \$75.00 or \$100, as I stated. I don't remember which it was.

Q. Who paid it to you? A. McKinley.

Q. Do you know John H. Shupe?

A. No, sir.

Q. How?

A. I don't remember the gentleman.

Q. Do you recall signing any instrument in his presence? A. I do not.

Q. Who was present when McKinley paid you the \$100.00?

A. I think I got it in Portland here. I don't remember anybody being present.

Q. Do you know whether Basil H. Wagner was there? A. I do not.

Q. Well, now, you say McKinley told you that there would be \$75.00 or \$100 in that—when did he tell you that?

A. Before I left Portland—so much and expenses.

Q. Before you left to make the filing?

A. Yes.

Q. If you did mortgage the land, do you know whom you mortgaged it to? [272—104]

A. I do not.

(Testimony of Thomas R. Wilson.)

Q. Do you know whom you deeded it to, if you did deed it? A. No, sir.

Q. Do you know whether you did deed it or not?

A. I remember signing something, but I don't know whether it was a deed or mortgage now. I could not tell you now.

Q. When did you next hear of the claim, or anything relating to it, after you had made proof?

A. What was the question?

Q. When did you next hear of the entry, after you had made proof, and got your \$75.00 or \$100.00?

A. Well, there was some—few months *months* later, there was a special agent came out here, and we had to go before the special agent and sign an affidavit, or a paper of some kind, relative to the claim, the condition of things out there, which I supposed it was.

Q. How did you learn of the presence of the special agent? A. Mr. McKinley.

Q. Where did he tell you about it?

A. At a room in the Imperial Hotel.

Q. How did you happen to be in the room?

A. I was shown to the room.

Q. By whom? A. Mr. McKinley.

Q. Well, what did you do when you got in? Who was [273—105] in the room?

A. A gentleman in there supposed to be a special agent, of the Government.

Q. Do you know what his name was?

A. I do not.

Q. Would you know his name if you heard it?

A. I don't think I would, no.

(Testimony of Thomas R. Wilson.)

Q. Anybody else in the room when you got there?

A. No, sir.

Q. What did you do when you got in the room?

A. He saluted me as Mr. Wilson, and he said to me something like this: "Well, you know what this is?" I says: "I *suposee* I do." He says: "You can just sign your name here." And I signed my name without the document being read to me.

Q. Did you read it yourself?

A. I did not. He told me it was the conditions of the claim out there, and improvements, and so on.

Q. Well, after you had signed the instrument, what did he do? Did he swear you or anything?

A. I signed my name, and he said that was all. I guess he finished it up. I didn't wait to see.

Q. What did you do then?

A. I went on about my business.

Q. Whom did you see immediately after you came out of the room?

A. I saw McKinley and Tarpley.

Q. Anybody else?

A. Not that I remember, no.

Q. Did you see Mr. Kribs around there about that time?

A. I met Mr. Kribs. I don't know whether it was that [274—106] day or the next day I met him.

Q. Where did you meet him?

A. Well, I don't know. It was in Portland somewhere. Washington Street or—I can't recall now where it was.

Q. Did you ever sign any other affidavit or in-

(Testimony of Thomas R. Wilson.)

strument relative to that entry after that time?

A. Not that I know of.

Q. Or before that time after you had made proof?

A. Not that I know of.

Q. When did you first meet Mr. Kribs?

A. Some time about the time the special agent was here.

Q. You had not met him before?

A. Not that I remember of, no.

Q. Do you remember seeing him in Roseburg when you made proof?

A. No, I do not. I did not meet him.

Q. Who introduced him to you in Portland?

A. I think Mr. McKinley did, if I remember right.

Q. It was about the time of this signing of this affidavit you speak of? A. I think it was.

Q. I call your attention to the affidavit of claimant in "Government's Exhibit 52," especially to the signature thereto, and ask you whether or not that is your signature?

A. I think it is, yes. Yes.

Q. That bears date the 17th day of July, 1901. Purports to have been sworn to before E. D. Stratford, special agent of the General Land Office. I will ask you whether or not you at that time, or any time before or since, knew the person in whose favor you had executed a mortgage or a deed for that land?
[275—107]

A. That I know in whose presence?

Q. No, if you at that time, or at any time prior thereto or since knew in whose favor you had made

(Testimony of Thomas R. Wilson.)

a mortgage or deed for the land included in your entry? A. No, I do not.

Mr. McCOURT.—We offer the certified copy of the record of the mortgage and deed for this land in the same connection, and for the same purpose as we offered the others yesterday.

Marked “U. S. Exhibits 58 and 59.”

Mr. McCOURT.—That is all. Take the witness.

Cross-examination.

(Questions by Mr. LIND.)

When you went to make the filing on this land, did you start from Portland? A. Yes, sir.

Mr. McCOURT.—Oh, will you pardon me just a moment. There was a question I wanted to ask him.

Mr. LIND.—Yes.

Mr. McCOURT.—Did you ever see the land included in your entry?

A. Never did.

Q. Do you know where it is?

A. No, sir.

Mr. McCOURT.—It is conceded that this is the entryman mentioned in those papers, I presume.

Mr. LIND.—Yes.

Cross-examination Continued.

Q. Was Mr. McKinley on the train?

A. I believe he was, yes.

Q. He lived at Portland at that time? [276—

108]

A. He made his headquarters here, yes.

Q. You knew him pretty well?

A. Yes, I did.

Q. You were friends? A. Yes.

(Testimony of Thomas R. Wilson.)

Q. You knew he was in the land business?

A. Yes, sir.

Q. He was locating settlers and locating timber lands for intending purchasers, right along, was he not?

A. That I understood, yes.

Q. He told you all about this claim, the location of it?

A. No, sir.

Q. How?

A. I know?

A. No, I say he told you about this claim, and the location of it?

A. Oh, yes. Yes.

Q. Told you it was good timber?

A. Yes.

Q. And gave you the description?

A. Yes.

Q. You intended to make a claim?

A. Yes, through Mr. McKinley, yes.

Q. How?

A. Through Mr. McKinley I did, yes.

Q. Did you intend to commit any fraud on the Government or any one else?

A. I did not understand anything at the time, no, not at the time I filed on the claim.

Q. Well, you filed on the claim because you wanted it, did you not?

A. What was in it for me, yes.

Q. You had not made any bargain to sell it to anybody when you filed, had you?

A. Not at that time, no. [277—109]

Q. You felt at liberty, the day after you filed, if anybody had offered you a satisfactory price, for your filing, you felt at liberty to sell?

A. I would be in the mind to sell, yes. But it was all in Mr. McKinley's hands.

Q. Well, you felt that you morally owed him a fee

(Testimony of Thomas R. Wilson.)

out of any proceeds, for locating you?

A. Naturally.

Q. Did you ever make a bargain with him that you were going to sell to him, before you made final proof?

A. No, I don't think—I can't recall it now.

Q. Or to sell to anybody else?

A. No, not that I know of.

Q. When did he first speak to you about raising the money by mortgage, if you recall, to make the final proof?

A. Quite a long time ago—I can't recall now just exactly when he did speak to me about it.

Q. But it was before, a couple of weeks before the final proof, was it not? When it was advertised,—or about that time?

A. Well, I judge it would be about that time, but I would not say for sure.

Q. Well, you relied upon him to raise that money by way of mortgage or otherwise, for paying the Government, did you not?

A. The whole thing was right in his hands; yes.

Q. For your benefit?

A. For my benefit, to see what I would get out of it.

Q. Now, have you any recollection when the first talk [278—110] was had between you and Mr. McKinley in regard to selling this land?

A. No, I have not.

Q. You are pretty confident that the papers for the sale were made out here in Portland?

(Testimony of Thomas R. Wilson.)

A. I thought they were, yes. I don't know for sure.

Q. You have no recollection of meeting Kribs, you say, until a long time afterwards?

A. It was some six or eight months, possibly, after, I met Mr. Kribs in Portland. I don't know the date exactly.

Q. Had you ever heard of a man by the name of C. A. Smith at that time?

A. Not at that time, no.

Q. When did you first hear of him?

A. Oh, within the last year or two.

Q. Do you, or do you not recall whether Mr. McKinley told you, shortly before the final proof, that arrangements had been made with Mr. Fred A. Kribs, or Mr. Kribs, to furnish the money to make the final proof?

A. I can't recall that. I don't recall that.

Q. Now, you say you met Mr. Kribs, a year later or so, in Portland, on the occasion when a special agent was here. Did you have any talk with Mr. Kribs about this matter at that time?

A. I don't remember any land conversation at all with Mr. Kribs.

Q. Do you remember the name of the special agent that you met that day? [279—111]

A. No, sir.

Q. At the hotel? A. No, sir.

Q. Was his name Loomis?

A. I don't remember.

Q. What sort of a looking man was he?

A. Well, he was sitting down when I went in. I

(Testimony of Thomas R. Wilson.)

could not remember—ten years ago.

Q. Did he have a typewriter in the room?

A. No, sir.

Q. No young man acting as stenographer or typewriter? A. No, sir.

Q. How long have you lived in Portland?

A. I came here the first time 20 years ago.

Q. You are now in the employ of the State?

A. Yes, sir.

Q. State of Oregon? A. Yes, sir.

Q. As a bookkeeper at the State Penitentiary?

A. Yes, sir.

Q. How long have you been so employed?

A. Seven years the first day of this month.

Q. That is all.

Redirect Examination.

Q. Do you recall whether or not when Mr. McKinley directed you to go before the special agent, that he mentioned the land involved, whether or not it was the land—the timber claim? A. Yes.

Q. He did? A. Yes.

Q. Did you give some affidavits in some other claims in which you were interested at one time?

[280—112]

A. I think probably I did, yes.

Q. Do you remember distinctly that the affidavit that you are talking about now is not one of those?

A. Yes, sir.

Q. You do?

A. The reason why, there was a contest on, I believe, somewhere about that time, or going to be—I don't know what. There was going to be a con-

(Testimony of Thomas R. Wilson.)

test on some of those claims, or something out there.

Q. Some of which claims?

A. Some of those claims that I made this affidavit for.

Q. This timber land? A. Yes.

Q. Were the other claims in which you were interested, timber claims? A. Yes, sir.

Q. Well, did you take them under the Timber and Stone Act or under the Homestead Act?

A. Homestead.

Q. They were really homestead claims?

A. Yes, sir.

Mr. LIND.—What has that to do with this?

Mr. McCOURT.—It was an indication in your question that he might have given an affidavit to Loomis instead of Stratford in this matter. I want to make it definite that it was this matter.

Mr. LIND.—You will pardon me. I have not seen that.

Mr. McCOURT.—It has his signature on it.

Mr. LIND.—Stratford?

Mr. McCOURT.—Yes.

Mr. LIND.—Oh, well, that is all.

Q. Now, you say you took that claim up for your benefit? What benefit were you going to have?

[281—113]

A. Well, I was guaranteed so much—\$75.00 or \$100, and expenses to start in with, up to the time it went into litigation, why, the balance was all off. At the time I took it up, why, I took it up for what was in it at the time.

(Testimony of Thomas R. Wilson.)

Q. And to whom were you going to turn the title?

A. Well, I didn't know anything about that. McKinley had that in charge.

Q. It was to be turned to whoever he directed?

A. Yes.

Mr. LIND.—Do you refer to some other entry or the entry in suit?

Mr. McCOURT.—No. I refer to this one right here.

Q. You refer to this same particular entry, do you not?

A. Yes, sir, that same particular one.

Q. Now, you say that McKinley gave you the description. How did he give it to you?

A. I don't remember that—whether it was on a piece of paper, or told me about it—I don't remember where it was—I don't remember how he gave it to me. I don't remember.

Q. Did you read over the instrument you signed at Roseburg, when you filed?

A. Yes, I must have.

Q. What? A. I must have, yes.

Q. Do you have any recollection of reading it?

A. I must have done it at Roseburg, because it was before the receiver there, I guess. I must have read it, but I don't recall reading it.

Q. No? A. No. [282—114]

Q. Well, how is it that you recall that you did not read that affidavit?

A. Because the way it was put up to me.

Q. Now, had you ever seen that man that took

(Testimony of Thomas R. Wilson.)

the affidavit, before you stepped into the room?

A. No, sir, not that I know of.

Q. Did you ever spend any money in connection with that timber claim of any kind?

A. Not directly for the timber claim, no. I spent money of my own, in going to Roseburg a couple of times but not for the timber claim.

Q. For your fare? A. No, incidentally.

Q. For cigars? A. Yes.

Q. And such? A. Yes.

Q. Did you pay any money of any kind in connection with the claim? A. No, sir.

Q. At whose direction did you make the deed and mortgage, if you ever did make them?

Mr. LIND.—Wait a moment. I object to counsel using the word “direct.”

A. It must have been—

Mr. McCOURT.—If anybody.

COURT.—You used the word direct. Probably request would be better.

Mr. McCOURT.—It was direct, as a matter of fact.

A. I think it was at the direction of McKinley.

Q. Did you ever pay any attention whatever to the matter after the day that you made the proof except as your attention was called to it by McKinley that one time? [283—115]

A. No, I don't believe I did.

Mr. McCOURT.—That is all.

Recross-examination.

Q. Well, now, as I understand you, Mr. Wilson, the understanding between you and McKinley was,

(Testimony of Thomas R. Wilson.)

he described the land to you, assured you that was a good piece of timber land, and that if you entered it there would surely be \$100, and if it could be sold for more, why, there might be a bigger thing?

A. \$75.00 or \$100.00 at least, and expenses, if I would take it up, yes.

Q. And you understood that after you made the final proof, he might put it on the market and negotiate the sale of it?

A. At that time, yes.

Q. That was your understanding?

A. At that time, at the time the filing was made, yes.

Q. And then after you had made your final proof, you concluded to sell it? A. Well—

Q. I mean to deed it?

A. Well, that was right in his hands. He could do as he liked with it. If he got a bigger price, all right. I got my fee. But the understanding when we took it up first, I would get my \$75.00 or \$100.00, whatever the matter might be, and expenses at the time. And he was to turn it.

Q. How? A. He was to turn it over.

Q. Turn it over to what? [284—116]

A. Turn it over, make some money out of it—turn the deal over.

Q. For you or for himself?

A. For himself. And if he got more money, probably I would get some more out of it.

Q. You felt if you had a good offer, you felt at

(Testimony of Thomas R. Wilson.)

perfect liberty to sell it yourself, did you not, at any time?

A. I never thought that, now.

Q. How?

A. I never thought that myself. I left it all to him.

Q. Yes, I know. But there was nothing in your understanding to prevent you from making a sale of that claim yourself, and compensating him for his location, was there?

A. Well, I think there was. I didn't have the money to take the claim up, in the first place myself. And it would have to go through him before I could do it.

Q. So you left the management to him?

A. All entirely, yes.

Q. But nevertheless you did not bargain to sell it to him?

A. Not at that time, no.

Q. When did you have that understanding with him?

A. Well, that was later than that. It was somewhat later that we—it must have been after I made the final proof, that he came to me and said that he could sell it.

Q. It was after you made the final proof?

A. I think so.

Q. That he went to you? A. Yes. [285—

117]

Redirect Examination.

Q. Did you or did you not understand the papers

(Testimony of Thomas R. Wilson.)

that McKinley brought you to sign to be in furtherance of the original arrangement that you had made with him?

Mr. LIND.—Now, this is objected to, your Honor. There should be an end to this.

Mr. McCOURT.—I think the matter is clear enough myself, but the trouble with these cases is this—

COURT.—Let him answer it.

(Question read.)

A. Yes. I think that ended it, I guess.

Q. That ended the original transaction?

A. Yes.

Q. Did you ever try to borrow any money from anybody else? A. No.

Q. Did you ever try to sell the land to anybody else? A. No.

Mr. McCOURT.—That is all.

Recross-examination.

Q. You and McKinley were personally friendly?

A. We were.

Q. Rather chums?

A. In a way, yes. Yes, we were.

Q. You had implicit confidence in him handling that claim for you to the best advantage?

A. Yes.

Q. For your benefit? A. Yes.

Q. And that is why you relied on him, was it?

A. I relied on McKinley, yes. [286—118]

Redirect Examination.

Q. Did you about this same time have some simi-

(Testimony of Thomas R. Wilson.)

lar transactions with McKinley?

A. It was later on.

Mr. LIND.—That is objected to as incompetent and irrelevant unless it pertains to some matter in suit, and not proper redirect.

Mr. McCOURT.—I will not press that on account of the witness himself. I do not think it is necessary to press it.

COURT.—Very well.

Mr. McCOURT.—That is all.

Witness excused. [287—119]

[**Testimony of Ed Finley, for the Government.**]

ED FINLEY, a witness called on behalf of the government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Finley?

A. I live in Polk County, Oregon.

Q. How long have you lived there?

A. About 35 years.

Q. How far do you live from Salem?

A. About four miles—something like that.

COURT.—Please speak a little louder.

A. About four miles, I think, by the road.

Q. Were you living there in 1900?

A. Yes, sir.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Dan W. Tarpley? A. Yes, sir.

COURT.—Speak up.

(Testimony of Ed Finley.)

A. Yes, sir.

Q. S. A. D. Puter?

A. I know him when I see him; that is all; not personally acquainted with him.

Q. What business were you engaged in in January and February, 1900? A. Farming.

Q. I will ask you whether or not you made a filing upon a timber claim in Linn County—

A. Yes, sir.

Q. —in that—in January or February, 1900?

A. Yes, sir, as near as I remember.

Q. State to the Court the circumstances leading up to making the filing and surrounding the same.
[288—120]

A. Well, a man by the name of Hughes came to me and asked if I wanted to—

Q. Louder please.

A. A man by the name of Hughes came to me one night and asked if I wanted to take up a timber claim. I told him I didn't know. Then he said that Mr. McKinley was having persons to file on some timber claims—make filings. So I seen Mr. McKinley and I asked him what the proposition was and he stated the conditions. Stated that—

COURT.—Speak a little louder, please. I don't think counsel can hear you very distinctly.

Q. Go ahead.

A. Well, he said that they would advance their money for the expenses—

COURT.—Louder please.

A. Said they would pay the expenses, all ex-

(Testimony of Ed Finley.)

penses connected with acquiring the land or the filing and going to and from Salem there, and also there would be \$75 or \$100 in it besides; and we was to give a note and secure it by a mortgage on the land.

Q. Who was this man Hughes?

A. Well, he was a party that lived around Salem there.

Q. A dark moustached fellow that used to play poker a good deal? A. I think so.

Mr. LIND.—I object to that and ask that that be stricken out.

Mr. McCOURT.—Well, that is his chief business.

COURT.—You can strike that out. There is enough to inquire into in this case without inquiring into the personal habits of all these people.

Q. Well, now, what did you do after you talked to McKinley? [289—121]

A. What did we do?

Q. Yes.

A. Why, we was waiting on the train that night with the rest. Some other persons going up there to file on the train, and just waited there until it was time to go, and went.

Q. Went where? A. Roseburg

Q. That was the same day you talked with McKinley? A. Yes, sir.

Q. How many of you went along?

A. Well, there was seven or eight that was going—that was there at that time that I knew.

(Testimony of Ed Finley.)

Q. Will you please name those you knew and can remember?

A. Well, I think there was my brother, Sel Finley, and Frank Starr, Green, Charlie Barr, Charlie Burley—

Mr. LIND.—I can't hear.

Mr. McCOURT.—Charlie Burley.

A. Yes. I believe Jay Phillips—I believe, I am not sure. There may have been some others, but I can't recall now who they were.

Q. Now, what was Charlie Burley doing at that time?

A. Well, he was staying out there in the country with my—at my father's place, I think, at that time.

Q. And Jay Phillips, what was his occupation?

A. I think he was tending bar.

Q. And Clel Nash—what did Clel do then?

Mr. LIND.—Wait a moment. Is he a party to this suit?

Mr. McCOURT.—No, he is not, but he is one of the entrymen.

Mr. LIND.—I object as irrelevant.

COURT.—One of the entrymen named in this list.

A. Shall I answer the question? [290—122]

COURT.—Yes.

A. What was he doing?

Q. Yes.

A. I think he was tending bar too.

Q. And Frank Starr—what was his business?

A. I couldn't tell you. Don't know that he had any.

(Testimony of Ed Finley.)

Q. Didn't have any, did he?

A. I guess not.

Q. Charlie Barr—what was he doing?

A. I think he was a farmer. I don't know. Either farming or working on a farm or in a hop-yard or something.

Q. Working on a hop ranch for Dug Minto, wasn't he?

A. I think that is what he was doing.

Q. Well, after you filed at—did you all file at the same time up there? A. I think so.

Q. Well, what happened after you got through making filing?

A. Well, we—as soon as—as soon as we got through filing I went out and signed a note and mortgage.

Q. Well, didn't you make more than one trip up to Roseburg?

A. No, sir, I don't think so. I don't think that I did. Not that I remember of.

Q. Do you remember what month that was that you went up there? A. No, sir, I do not.

Q. Do you know where this land is that you filed on?

A. Well, I think that I have been somewhere near it. I was up in the mountains there above Sweet Home and they told me that was the land. That is all I know about it.

Q. When was that? A. When was it?

Q. Yes—with relation to the time you filed or proved up. [291—123]

A. Well, it was a few days before we filed—be-

(Testimony of Ed Finley.)

fore we filed on the land.

Q. Now, don't you recall that you were up to Roseburg twice?

A. Well, I have no recollection of transacting any business in connection with this—at the Roseburg office—Land Office, in this case.

Q. Well, at this time that you refer to, where was—where did you go to sign this note and mortgage that you speak of?

A. Well, it was in a hall, I think, leading right out of the Land Office.

Q. Who was there?

A. There was—well, I don't remember exactly who was there. I don't recall any names at present.

Q. Was McKinley there?

A. When we signed the paper?

Q. Yes.

A. Well, I think probably he was and Tarpley, and I don't remember who all. There was several right there in the room at that time. They was all signing as soon as we could and a man stepping away—

Q. How is that?

A. They was several persons there at the time that we was signing. They was signing them right along in regulation; as soon as one signed they would step aside and somebody else would sign.

Q. That is, when they signed the proof or the deed or mortgage?

A. Supposed to be signing the mortgages.

Q. In the Land Office?

A. No, it wasn't in the Land Office; not right in

(Testimony of Ed Finley.)

the Land Office. If I remember right, it was kind of in a hallway there, somewhere close to the office.
[292—124]

Q. Now, how soon did you go into that room after you had made your proof?

A. To sign these papers? Why just as soon as we got through in the Land Office, I think. We stepped right in there and signed the papers.

Q. Now, who was doing the writing there?

A. I could not tell you.

Q. Did you know the parties? A. Sir?

Q. Did you know the parties that were making out the deeds or making out the mortgages?

A. No, sir.

Q. Well, what other—what other business occurred there at that time after you got your mortgage signed?

A. Well, that is all that I remember of, except that night they came around and gave me \$75.

Q. Give anybody else of the party \$75?

A. Yes, sir.

Q. Who? A. Charlie Burley.

Q. He was with you? A. Yes, sir.

Q. Did you notice any of the others that had been signing mortgages there getting \$75?

A. No, sir.

Q. Just you and Burley was all that you know?

A. Yes, sir.

Q. Now then, after that, did you sign any other paper? A. At that time?

Q. Or did you go home?

A. Oh, no, I came home.

(Testimony of Ed Finley.)

Q. Yes.

A. Yes, I remember of signing some papers for Mr. McKinley at Salem, at the Willamette Hotel, but I do not know the nature of what it was, now; and also signing a—signing a [293—125] deed some time after.

Q. How long after it was it you signed the deed?

A. Well, I couldn't say now, but it must have been—it occurs to me that it was three or four months or more. Might have been longer; I would not be positive on that.

Q. Well, the deed shows it was four days after; how about that?

A. I don't remember of signing—I know I signed one deed. I remember that distinctly. I don't know that I signed any other note or deed, or the mortgage and the note; but for any other deed, I don't remember of signing it, except the one that I say several—a long while afterward.

Q. Was your wife up at Roseburg?

A. No, sir.

Q. At that time or any other time?

A. No, sir.

Q. Do you know John H. Shupe?

A. No, sir.

Q. A lawyer that used to be in Roseburg?

A. I don't remember.

Q. So your wife wasn't there that date that you made proof? A. Yes, sir.

Q. Now, in connection with this entry, after you concluded to take it, did you ever go to look at this

(Testimony of Ed Finley.)

land? A. How is that?

Q. Did you ever go to look at the land that you were going to take after you concluded to make the entry?

A. Well, yes, before I filed on the land I went out there.

Q. Who went along in that party?

A. Well, I remember Frank Starr and Sel Finley and Jay Phillips and Charlie Barr—about all I remember of.

Q. How did you get there?

A. Well, we went to—as far as Lebanon, I think, on the train, and then went from there to Sweet Home, and stayed all night there; and then went on up in the mountains 15 [294—126] or 16 miles with a buggy—buggies—and then we started out from the place where we stayed all night there, afoot.

Q. Where did you stay all night?

A. I think it was Malley's—was the name of the place, if I remember right. I don't know the name, only just what I heard.

Q. Now, hadn't you been to Roseburg once in connection with the entry before you went out there to look at the land?

A. Stopped in Roseburg—let's see, I don't—

Q. Hadn't? A. I don't remember.

Q. Anyhow, who—or what did it cost you to go out there to look at that land—to go to Roseburg?

A. I couldn't say.

Q. Did you pay it? A. No, sir.

(Testimony of Ed Finley.)

Q. Who did?

A. Well, I understood that McKinley did. I don't know who did, but the way was paid. Nobody asked me for anything.

Q. Did you ever pay any money in connection with the entry, whatever? A. No, sir.

Mr. McCOURT.—Now, in connection with this matter, I offer the usual mortgage and deed.

COURT.—Made to the same parties?

Mr. McCOURT.—Yes, made to the same party.

Mortgage marked "U. S. Exhibit 60."

Deed marked "U. S. Exhibit 61."

Q. Now, did you know—did you talk to Mr. Burley about it? You and he discussed this matter?

A. Yes, sir.

Q. Of making these mortgages? Do you know whether his was made in the same manner as yours was?

Mr. LIND.—That is objected to as calling for the [295—127] witness' conclusion.

COURT.—Unless he knows of his own knowledge.

Mr. McCOURT.—I asked him if he knows.

A. What is the question please?

Q. I ask if you knew whether Mr. Burley's entry was made in the same manner and under the same conditions as yours, with Mr. McKinley?

Mr. UELAND.—Isn't that too general? It makes the question cover a large detail of matter.

COURT.—I think it should be more definite.

Q. Was Mr. Burley present when you and Mr. McKinley were talking over the matter, and were

(Testimony of Ed Finley.)

you present when the arrangement was made with Burley by McKinley, if it was made?

A. No, sir. I think Mr. McKinley kind of set to one side and talked with both of us. I don't think anybody overheard the conversation.

Q. I mean, did you hear the conversation of McKinley with Burley?

A. No, sir, I did not.

Q. Nor did Burley hear the conversation with you? A. I think not.

Q. In the different trips that you made in connection with it, state whether or not Burley was always one of the party? A. I think so.

Q. Did you ever talk—did Mr. Burley ever tell you what his arrangement was?

Mr. UELAND.—That is hearsay.

Mr. McCOURT.—No, that is not hearsay. Mr. Burley is a party.

COURT.—Party to this suit?

Mr. McCOURT—Yes, a party in this suit. [296—128]

Mr. UELAND.—May it please the Court, the defendants that we represent object to this as evidence against them.

Mr. McCOURT.—I will confine it to Mr. Burley, except, I suppose, I will have to show that these defendants had knowledge, in some other manner. The fact that Mr. Burley might have admitted it, would not be notice to them.

A. What is the question, please?

Mr. LIND.—I think, your Honor, under the cir-

(Testimony of Ed Finley.)

cumstances of this case—here is a charge of conspiracy against the defendants that we represent. Now, I can't see how the conspiracy charged against us can be construed to be affected through defendants not parties to the conspiracy charged; nor how admissions back and forth between them—it is hearsay as to them, and certainly incompetent and hearsay as to us.

COURT.—Well, I suppose the government has to proceed to show fraud in the first place and then show notice of it. Burley is a party to this suit, as I understand, one of the defendants. Whatever admission he made is competent against him whether against anyone else.

Mr. LIND.—Yes, for that purpose, your Honor.

Q. (Read.)

A. No, I don't believe that he did.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Finley, what is your age?

A. Forty years old.

Q. Have you a family? A. Yes, sir.

Q. How long have you been married?

A. About 13 years.

Q. Children? A. No, sir.

Q. At the time that you filed on the land in controversy [297—129] in this suit, were you living on your farm? A. Yes, sir.

Q. Did you own the farm? A. Yes, sir.

Q. How far is that away from—how far did you live from the land that you located—about?

(Testimony of Ed Finley.)

A. I couldn't say; I don't remember I couldn't—

Q. Well, approximately?

A. Probably 150 miles—something like that.

Q. How?

A. Probably 150 miles—I couldn't say.

Q. How long had you known Mr. McKinley before you made this filing?

A. Well, I hadn't known him personally for—only at the time—I don't believe I have ever talked to him much, only just before I—about filing. I had seen him around Salem different times. Knew it was McKinley.

Q. What was his business?

A. Well, I understood that he was a land locator.

Q. That he located people that wanted claims?

A. Yes.

Q. Did I understand you to say that you called him up after Hughes had talked to you?

A. Yes, when I met him I spoke to him.

Q. Spoke to him about locating a claim for you?

A. Yes, sir.

Q. Did he say he would? A. Yes, sir.

Q. Was anything said at that time about arrangements for money to pay for the claim, or mortgage, or was that discussed later?

A. No, it was discussed then. He said that the expenses, all the expenses, would be paid in regard to acquiring the land. [298—130]

Q. Did he say that he would advance the money—that he would put up the money for the expenses?

(Testimony of Ed Finley.)

A. Yes, sir.

Q. Did he say how much the mortgage loan would be for?

A. I don't think he did. I don't remember, at that time.

Q. Did he later, or did he tell you what his—

A. No, I don't think he did later.

Q. Did he tell you what his locating fee was? What his fees for locating were?

A. No, I don't remember of him saying anything in regard to that.

Q. Well, as a matter of fact, didn't he tell you that his fee for locating was \$100?

A. Well, he may have possibly said that.

Q. And that the mortgage would have to be large enough to cover the locating fee and the Land Office fees and to give you \$75 or \$100?

A. Well, that was about the substance of the conversation as near as I can remember.

Q. Then, wasn't it understood that, if afterwards the land was sold for more, you and he would have the benefit of it?

A. Well, there was nothing said in regard to selling the land.

Q. At that time? A. No, sir.

Q. When was the first talk with McKinley about selling the land?

A. I never had any talk with him about selling.

Q. Well, I mean when you signed the deed. When did you—wasn't there any talk about selling the land when you signed the deed?

A. No, sir. [299—131]

(Testimony of Ed Finley.)

Q. How did you come to sign it?

A. Well, they just came out, Mr. Tarpley and Mr. Puter, and asked if I wouldn't sign the deed, and I supposed that the mortgage had become delinquent, so I just merely signed it.

COURT.—Who did you say came out there?

A. Mr. Tarpley and Mr. Puter.

COURT.—Came out to your farm?

A. Yes, sir, my father's place. I was living with my father.

COURT.—That is where the deed was signed?

A. Yes, sir.

Redirect Examination.

Q. Isn't it a fact that you understood that deed, at the time, to be a part of the original arrangement you had with McKinley?

A. How is that question, please?

Q. Didn't you understand that deed to be a part, and the end of the original arrangement you had made with McKinley?

A. Yes, I think I did.

Q. Did you get any other or more money at that time than you had already received?

A. No, sir.

Q. Did you ask for any?

A. No, sir.

Q. You spoke—I ask a matter that I forgot—you spoke of signing an instrument or paper in the Wilamette Hotel afterwards. What was that, do you know?

A. No, sir, I don't know the nature of it at all.

Q. Were you ever asked to sign an affidavit before a government agent in regard to this transaction?

A. Yes, sir.

(Testimony of Ed Finley.)

Q. When was that?

A. Well, I don't remember when it was; couldn't—have no recollection in regard to it at all. [300—

132]

Q. And where was it?

A. Well, they said that the agent was there in Salem at the Willamette Hotel.

Q. Who told you that? A. Mr. McKinley.

Q. Did you sign any affidavit? A. No, sir.

Recross-examination.

Q. One moment. Had Mr. McKinley ever said anything to you in any conversation that you had with him, about deeding this land to anybody before you made the final proof? A. No, sir.

Q. When Puter and Tarpley came up to your father's place where you were living and working, to get this deed, didn't they pay you \$25 for that deed? A. No, sir.

Q. They did not? A. No, sir.

Q. What made you give it? Why did you sign the deed when they came there?

A. Well, sir, I couldn't tell you, only as a matter of courtesy, I suppose. I supposed that I had no more interest in the land.

Q. Why did you think you had no more interest in the land?

A. Well, I supposed that the mortgage had run its length of time and had taken the land.

Q. You didn't have the money to pay the mortgage? A. No, sir.

Q. And you didn't see your way clear to raise it?

A. No, sir.

(Testimony of Ed Finley.)

Q. So you were willing to let it go?

A. Yes, sir.

Redirect Examination.

Q. Did you not understand that that mortgage was merely an [301—133] instrument by which the real nature of the transaction would be covered up?

A. Why, I didn't know—I didn't understand the nature of it at all. I might have had an opinion or something of that kind.

Q. Did you understand that that was the method by which the title was to be transferred from you to McKinley or whoever was to get the title?

Mr. LIND.—That is objected to as calling for a conclusion.

Mr. McCOURT.—Calling for an understanding.

Mr. LIND.—Well, an understanding, and as my associate suggests, an understanding at that time is utterly immaterial; at the time he made the deed.

COURT.—He asked about the original understanding with McKinley.

Q. Did you understanding at the time McKinley approached you about taking this timber claim, that that mortgage you were to execute was the method by which the title was to be transferred from you to the person to whom he wished it to go? A. No, sir.

Q. You did not?

A. Didn't understand it.

Q. What did you understand?

A. I understood it just the same way that you would give a mortgage of any kind.

Q. What?

(Testimony of Ed Finley.)

A. Just the same as you would, any common mortgage.

Q. Any common mortgage? A. Yes, sir.

Q. When did you discover that it was something else? [302—134]

A. Well, I don't know as I did.

Q. How is that?

A. I don't know as I did discover that it was anything else.

Q. How was it you signed a deed three days after, deeding the land to an entirely different party than you had given the mortgage?

A. If I signed any deed at that time, I didn't know it; not three days after. I supposed I signed the deed, it was this deed that I spoke of, several months after. I don't remember of signing only one deed, and if I did it, I did it unbeknowing.

Mr. UELAND.—Mr. District Attorney, if I may be permitted to call your attention to it, the proof will show that it was a mistake in the first Finley deed, and it was corrected by a later deed.

Mr. McCOURT.—Well, I will find out.

Mr. UELAND.—I simply call your attention, that is the case. A mistake in the first deed, and the correction later on.

Mr. McCOURT.—Have you that second deed?

Mr. UELAND.—I will see.

Q. I will ask who came there. Who did you say came out and got the deed?

A. Tarpley and Mr. Puter.

Q. Did they ever come to your place but one time?

A. That is all.

(Testimony of Ed Finley.)

Q. That is the time you understood you were signing a deed? A. Yes, sir.

Q. And that was—did your wife ever sign any other document than that one time when they came out there?

A. No, sir, not that I know of. [303—135]

Q. Do you recall ever taking your wife to the Willamette Hotel? A. How is that?

Q. Do you ever recall taking your wife to the Willamette Hotel to sign any paper before McKinley?

A. Yes, she went with me when I signed the paper.

Q. At the Willamette Hotel? A. Yes, sir.

Q. Now, that was the correction deed. Did you understand that was a deed? A. No, sir.

Recross-examination.

Q. Had you ever seen Puter until that day when he called at your farm?

A. Yes, sir, I had seen him at Roseburg.

Q. When you made your final proof?

A. Yes, sir.

Q. And made the mortgage? A. Yes, sir.

Q. Had you seen him before that time?

A. No, sir.

Witness excused. [304—136]

[**Testimony of Basil H. Wagner, for the Government.**]

BASIL H. WAGNER, a witness called on behalf of the Government, being first duly sworn by the Court, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Salem, Oregon.

Q. How long have you lived there?

A. Nearly 30 years.

Q. All your life? A. Practically, yes.

Q. Do you know Horace G. McKinley?

A. I do.

Q. How long have you known him?

A. 15 years.

Q. Mr. Dan W. Tarpley—you know him?

A. I do.

Q. S. A. D. Puter? A. Yes, sir.

Q. How long have you known Puter and Tarpley?

A. About the—well, I have known Mr. Puter about the same time I have known Mr. McKinley.

Q. What is your business, Mr. Wagner?

A. I am a clerk.

Q. Prior to the year 1900 what had you been doing? A. I had been working in Seattle.

Q. Did you ever work in the office of the Clerk of the School Land Board? A. I did.

Q. In Salem? A. Yes.

Q. How long did your work there?

A. About four years.

Q. And when—what years were those?

(Testimony of Basil H. Wagner.)

A. From 1896 to 1899.

Q. Do you recall the incident, Mr. Wagner, of having taken [305—137] a timber claim up in Linn County in January, 1900? A. I do.

Q. Will you kindly state the circumstances leading up to the taking of that timber claim and surrounding the transaction?

Mr. LIND.—That is objected to as irrelevant in this case, and incompetent for the purpose of establishing any of the matters charged in this complaint against the defendants.

Mr. McCOURT.—It is one of the 57 entries.

COURT.—Very well. It will be admitted subject to the objection.

Q. (Read.)

A. Mr. McKinley came to me about January of 1900, and told me that there would be an opportunity under the Timber and the Stone Act to take a claim and wanted to know—wished to know if I would be willing to go with him, which I did, to Roseburg. I filed. And after that I went to Brownsville, I think it was, and from there to Malley's place; then back to Salem and then after a short time, I went back to Malley's place near Foster, Oregon, and cut a trail—helped cut a trail, with Mr. Tarpley, John Thompson and William Malley. The time consumed in the cutting of the trail was about eleven days. Then, accompanying these gentlemen—or Mr. Tarpley in particular—back and forth from Brownsville to Malley's place, I returned home in Salem, Oregon. That concluded the transaction with the exception that I was paid in Roseburg for this timber

(Testimony of Basil H. Wagner.)

claim, by Mr. McKinley, the sum of \$100. Then after that I returned home to Salem, Oregon, and there remained for quite a while.

Q. Now, what relation did that \$100 that you received at Roseburg, have to the original agreement which you had with Mr. McKinley, if you had any prior to making the [306—138] filing?

A. The agreement that I had with Mr. McKinley, that there would be a certain profit accrue pending the sale of these lands, or of this claim.

Q. What was that certain sum?

A. The circumstances, as I said.

Q. Well, answer me. What was that certain sum?

A. That the profits might accrue.

Q. What was the certain sum that McKinley told you you would get?

A. There was no stipulated sum in my regard—possibly \$100.

Q. At least as much? A. At least \$100.

Q. Sure it was \$100? A. I think so.

Q. Or \$75? A. I think it was \$100.

Q. Now, did he pay you the \$100 there when you got through proving up? A. He did.

Q. In what kind of money? A. Currency.

Q. All—the whole \$100? A. Gold.

Q. The whole \$100?

A. With the exception of \$30.

Q. What was the matter with that?

A. That was taken out for expenses.

Q. Now, were you all this time cutting this trail on your own claim up there?

(Testimony of Basil H. Wagner.)

A. Not all the time.

Q. Whose claims were you cutting them on?

A. Well, I don't know.

Q. Who were you working for?

A. I was working for Mr. Malley.

Q. Who was Mr. Malley working for? [307—

139]

A. Mr. Malley was working for Mr. McKinley.

Q. Who sent you up there?

A. Mr. Tarpley.

Q. Who was he working for on that?

A. Mr. Malley.

Q. What was Mr. Tarpley doing up there?

A. He was locating.

Q. Who did he locate while you were there?

A. I think he located Harry Barr, Jay S. Phillips—the time has been so long that I have forgotten, about—ten years ago, nearly.

Q. Well, he located more than three people, didn't he?

A. I believe so.

Q. About how many were there all together?

A. Mr. Brandenburg—I don't know; probably a dozen.

Q. Give me the approximate number.

A. Probably a dozen.

Q. During the eleven days that you were there?

A. No, after that—after cutting the trail.

Q. Did you remain up there at Malley's?

A. Yes, for a while; I came back to Salem immediately after cutting the trail.

Q. And when—how long did you remain in Salem before you went up on the claim?

(Testimony of Basil H. Wagner.)

A. I think it was about ten weeks.

Q. Now then, at the time Mr. McKinley gave you that \$100 less \$30, did you execute any sort of instrument? A. I did.

Q. What? A. A mortgage and a note.

Q. In whose favor?

A. The note was in Mr. Krib's favor.

Q. For how much money? A. \$600.

Q. And was Kribs there?

A. He was. [308—140]

Q. Any other instrument executed there at that time? A. A mortgage.

Q. Securing the note you mentioned?

A. Yes, sir.

Q. Yes. That ran in favor of Mr. Kribs, too?

A. I believe it did. I have forgotten. I believe it did.

Q. Is that all you did? Is that all the instruments you executed? A. A deed.

Q. Who was that to? A. To John A. Willd.

Q. Who was he? A. I don't know.

Q. What was you making a deed to him for?

A. Sir?

Q. Why were you making a deed to him at the same time?

A. That was the purchaser of the land.

Q. Oh, he bought the land on the same day you mortgaged it?

A. No, it was about four or five days after that, as near as I can remember.

Q. You made them both there in Roseburg, didn't you? Both the deed and the mortgage?

(Testimony of Basil H. Wagner.)

A. I think I—let's see. No, my deed, I think, was made in Salem. No, it was made in Roseburg. It was made in Roseburg.

Q. Well, you didn't stay in Roseburg three or four days, did you, after you made proof?

A. No.

Q. The fact of the matter was, the deed and the mortgage were made at the same time—the same day?

A. The deed and mortgage?

Q. Yes. Is that so?

A. No, mine was made, I think, the 23d of April—my deed.

Q. I know it was dated the 23d of April.

A. Yes. [309—141]

Q. But isn't it a fact that the deed and mortgage were made the same day, there in Roseburg?

A. I have forgotten.

Q. Who was present when the deed was made?

A. Mr. Tarpley and Mr. Puter.

Q. Anybody else? A. I can't recall.

Q. Mr. Fred Kribs there? A. No.

Q. Oh, he wasn't there. What was the purpose of making the deed so shortly after the mortgage, or right at the time?

A. In regard to sell this land.

Q. Oh, yes, let's hear about that.

A. Well, I understood that there was a certain amount of profit to accrue to each entryman that had filed and completed entry.

Q. Well, what was that certain amount?

A. Whatever profits might accrue out of the sale of these lands.

(Testimony of Basil H. Wagner.)

Q. Well, they were sold right there. Why didn't you take your profits? What were you giving a mortgage for? A. No money.

Q. What? A. Had no money at the time.

Q. Who didn't? A. Me.

Q. Well, you made your sale right there. Why didn't you take your money?

A. I had an opportunity to hold these lands—

Q. Well, what did you deed them for if you were going to hold them?

A. — or deed them. I wished to deed this on account of not wishing to keep them.

Q. What did you get for not keeping them?
[310—142]

A. Nothing.

Q. Now, Mr. Wagner, if you will just confine yourself to the real facts in this transaction, and not try to be dramatic here, you and I will get along a whole lot better. I call your attention to what appears to be a warranty deed, executed at Roseburg on the 19th day of April, 1900, purporting to convey the lands included in your entry for \$1.00 to John A. Willd.

Mr. UELAND.—I want, in making that statement that it purports to be executed at Roseburg—

Mr. McCOURT.—Well, I will qualify that.

Q. I will ask you to examine the same and state whether or not that is your signature there as the grantor? A. That is right.

Q. Who were the witnesses?

A. Frederick A. Kribs, John H. Shupe.

Q. Does that refresh your memory now as to

(Testimony of Basil H. Wagner.)

whether or not Mr. Kribs was present?

A. I don't remember him being present at the time.

Mr. McCOURT.—I will have to introduce it a little later unless you will waive the formality of proving it.

Mr. LIND.—All right.

Mr. McCOURT.—I offer it in evidence to show the date at which it was given and to show the fact that Mr. Kribs apparently was present at the time.

Marked "U. S. Exhibit 62."

Q. Did you know who John H. Shupe was?

A. He was an attorney.

Q. Where did he live? A. Roseburg.

Q. Did you ever execute an instrument before him at any place except Roseburg?

A. None at all. [311—143]

Q. Do you recall that your proof was made upon the 18th day of April, 1900?

A. I think it was along about that time, yes.

Q. Now, this man John A. Willd, where did he—was he a friend of yours?

A. I never met the gentleman.

Q. Do you know where he lived or what his business was? A. No.

Q. Were you—or who was acting for Willd there at that time? A. Mr. Kribs, I think.

Q. Now, Mr. Wagner, after you had made proof—or rather, you say you signed a note for \$600 there. Did you ever pay it?

A. I believe it was satisfied—paid.

Q. Did you pay it? A. It was paid.

(Testimony of Basil H. Wagner.)

Q. Did you pay it? A. No.

Q. Who did?

A. The deed satisfied the mortgage.

Q. Oh, yes, and you made the mortgage and the deed the same day?

A. Oh, no, it was four or five days later.

Q. Was the mortgage and the note given the same day?

A. The mortgage and the note might have been given the same day.

Q. I will ask you if that is the note?

A. That is right.

Mr. McCOURT.—I offer the note in evidence to show the date on which it was given.

Marked "U. S. Exhibit 63."

Q. Now, when you had signed that mortgage and that deed there and got your \$100, less the \$30 that you owed Mr. [312—144] McKinley, when did you—did you ever have anything more to do with that land at all, in any way? A. Nothing.

Q. When did you next hear of the entry or have your attention called to it?

A. I had received notices from the Department of the Interior, to which I paid no attention.

Q. Well, did you pay any attention to any of them? A. No.

Q. Or anybody about the entry? A. No.

Q. Did anybody ever talk to you about it afterwards? A. Yes.

Q. Who? A. Mr. Stratford.

Q. Who talked to you before Mr. Stratford did, now?

(Testimony of Basil H. Wagner.)

A. I think it was Mr. McKinley.

Q. Mr. Kribs? A. Yes.

Q. Now, where did you meet Mr. Stratford?

A. Salem, Oregon.

Q. At what place in Salem?

A. At the Willamette Hotel.

Q. Who was present?

A. Mr. Kribs and Mr. Stratford.

Q. Who else? A. No one, as I recall.

Q. What occurred, now? A. What?

Q. What occurred, now?

A. He took my deposition.

Q. Who did? A. Stratford.

Q. Was his son there?

A. I don't remember whether he was or not.

Q. Well, in taking that deposition who answered the questions? A. I did. [313—145]

Q. All of them? A. Practically, yes.

Q. Who answered the questions as to who you had deeded the land, and whom you had mortgaged it to?

A. Mr. Stratford.

Q. Oh, Stratford did. What was Kribs doing?

A. Well, he was doing nothing.

Q. I hand you an instrument and ask you to examine the signature thereto, the same purporting to be an affidavit made before E. D. Stratford in regard to your claim, and ask you if that is your signature?

A. It is.

Q. Is that the instrument you signed there in the presence of Stratford and Kribs? A. It is.

Q. Was McKinley there?

A. No, sir; wait just a minute.

(Testimony of Basil H. Wagner.)

Q. That is it? A. Yes.

Mr. McCOURT.—I offer the affidavit in evidence.

Mr. UELAND.—What is the purpose of this?

Mr. McCOURT.—The purpose is to offer in connection with the presence of Mr. Kribs there, and in connection with the facts in the case as they conflict with the statement of the affidavit.

Mr. UELAND.—If the purpose of this is to discredit the witness, as I understand it, we object to it as incompetent.

Mr. McCOURT.—We don't offer it to discredit the witness.

COURT.—I don't understand it is offered for the purpose of discrediting the witness at all.

Mr. UELAND.—He says offered for the purpose of showing that it isn't consistent with the testimony given on the stand. [314—146]

Mr. McCOURT.—No, with the facts in the case.

COURT.—With the actual facts, not what the witness now testifies.

Mr. LIND.—Wouldn't the purpose still be impeachment?

Mr. McCOURT.—It might be its effect.

Mr. LIND.—The real objection is, your Honor, that it encumbers the record. It goes in under the general objection to this class of evidence.

Mr. McCOURT.—It may be understood that the stenographer may make a copy of merely the Wagner affidavit in the record. I don't offer the balance of it, but put them all together, so they may be kept together.

Marked "U. S. Exhibit 64." [315—147]

(Testimony of Basil H. Wagner.)

Q. Now, after you had finished making that affidavit, what transpired?

A. Let's see. Oh, Mr. Kribs bade me good-bye and said "Go"—he went away.

Q. What did he say, now?

A. He bid me good-bye.

Q. What did he give you? A. Good will.

Q. Didn't he give you \$5.00 and say, "Take this and go buy a hat?"

A. By George, I don't know; I guess he did.

Q. Do you know William J. Burns?

A. I do.

Q. Do you remember making a statement to Mr. Burns in regard to this transaction, about December, 1904? A. Yes.

Q. What? A. Yes.

Q. Did you read it—this same statement a day or two ago, when I showed it to you? A. I did.

Q. Didn't you tell me it was absolutely correct, all right?

A. Well, it might have been at the time that I thought it was, his methods being very arbitrary, you know.

Q. Yes. (Hands paper to witness.)

A. My signature.

Q. You say Mr. Burns' methods were very arbitrary. Weren't you an assistant of his?

A. Not at that time.

Q. Didn't you become one immediately thereafter? A. I did.

Q. Yes. You and Burns were pretty good friends, weren't you? Now then, did you not—well, I will

(Testimony of Basil H. Wagner.)

offer this affidavit in evidence—no, I will ask the witness. I merely [316—148] want to call his attention to another statement. Did you not, in that affidavit that you made before Mr. Burns, on the 28th day of December, 1904, state this: “I accompanied McKinley to the United States Land Office at Roseburg, Oregon, where I made a timber entry on the SW. ¼ of Section 28, Township 41 South, Range 3 East. McKinley told me at the time I would receive \$75 for making the entry”?

Mr. LIND.—Wait a moment.

Mr. McCOURT.—I merely ask if he did not make that statement in that affidavit.

Mr. LIND.—That is objected to as incompetent and the Government can't impeach a witness that it has brought in court and vouched for. If he is an adverse witness, we will concede that he can cross-examine as much as he likes to elicit the truth, but he can't impeach him.

Mr. McCOURT.—I really am not attempting—I don't mean to insinuate that the witness on the stand has lied just now. I merely want to refresh his memory. That is why I call his attention to it. Not to cast a reflection on the witness.

Mr. LIND.—Then give him an opportunity to read that statement.

Mr. McCOURT.—Certainly.

Whereupon proceedings herein were adjourned until 2 P. M. [317—149]

(Testimony of Basil H. Wagner.)

Portland, Oregon, April 20, 1910, 2 P. M.

BASIL H. WAGNER resumes the stand.

Direct Examination (Continued).

Q. Returning to the consideration of the affidavit, which you were starting to read at the noon adjournment, I will ask you whether or not you have read the same? A. Yes, sir.

Q. What do you say about its containing a true statement of facts as you understood them at that time? A. Yes, sir.

Q. I will ask you, then, whether or not you stated in that affidavit that McKinley told you at the time that you made the timber entry that you would receive \$75 for making same?

Mr. GEARIN.—He cannot ask him what he stated in that affidavit, your Honor. He may ask him the fact.

Mr. McCOURT.—I ask him if he did not state that at that time to Mr. Burns, and in his presence?

A. Yes.

Q. Who else was present there at the time?

A. I think Mr. Puter and Mr. McKinley, if I am not mistaken.

Q. And who was the stenographer who took down what you said?

A. Mr. Rittenhouse—Irvin Rittenhouse.

Q. Is that the Irvin Rittenhouse that is employed in the General Land Office of the United States at the present time? A. I think so.

Q. Now, was that the fact, that the arrangement was that you were to receive \$75, or thereabouts, for your timber claim? A. Yes, sir.

(Testimony of Basil H. Wagner.)

Q. I will ask you now if the deed and mortgage which you have talked about this morning was not made in pursuance [318—150] of that original agreement, and to carry it out? A. It was.

Q. I will ask you if you did not state, in that same affidavit, at that same time and place, in Portland, Oregon, on the 28th day of December, 1904, before William J. Burns, yourself, and Mr. McKinley and Mr. Puter and Mr. Rittenhouse being present said statement and affidavit having been made in the Portland Hotel in Portland, Oregon, that “the next time I had anything to do with the transaction was when Mr. Kribs came to me at Salem, Oregon, in the month of July, 1901, and stated that he would like me to go before a Special Agent of the General Land Office, named Stratford, stating that the patents had not yet been issued for the land, and it would be necessary for me to make an additional affidavit. Mr. Kribs then took me to Stratford, at the Hotel Willamette, and there I signed an affidavit, the questions in which were asked by Stratford, but were answered in part by Kribs, and not wholly by me?”

A. Yes.

Q. Was that the fact? A. Yes.

Q. Now then, I ask you, Mr. Wagner, if you ever made any other affidavit in regard to this claim besides this one before him—before some other Special Agent?

A. Mr. Wilson, I believe, at one time.

Q. When was that?

A. I think that was in—let me see—I don’t re-

(Testimony of Basil H. Wagner.)

member the exact date. That was about 1904, wasn't it?

Q. How did you come to go before Mr. Wilson?

A. Why, Mr. McKinley asked me to go before him.

Q. And where did you meet Mr. Wilson?

[319—151]

A. In the Imperial Hotel.

Q. Did you see Mr. Kribs on that occasion?

A. No, sir.

Q. Where did you sign an affidavit for Mr. Wilson?

A. I think in the Imperial Hotel.

Q. Was it the Imperial or the Portland?

A. Oh, let's see—I think it was in the Imperial.

Q. What did you do after you had signed it?

A. I went to Mr. Krib's office.

Q. How did you happen to go there?

A. Why, to ask him why this should be done.

COURT.—To ask him what?

A. Why this should be done.

Q. Why it should be done? Did you wait till after you had done it before you asked him why?

A. Yes.

Q. Well, what occurred there?

A. He gave me a check for \$25.

Q. Did you ask him for it?

A. I don't—no, I don't think.

Q. Voluntary contribution on his part?

A. Yes.

Q. Do you remember where you cashed that check?

A. Huber's Cafe, I believe.

(Testimony of Basil H. Wagner.)

Q. In Portland? A. In Portland.

Q. That was the same day that you signed the affidavit?
A. I believe it was.

Q. In order to refresh your memory in connection with that matter, I will ask you if it was not at Room 210 in the Portland Hotel that you signed the affidavit with Wilson?

A. Yes, I believe it was. [320—152]

Q. That refreshes your memory that it was?

A. Yes, I believe it was.

Q. Now, Mr. Wagner, going back to these trails that were cut up there, what was the purpose of cutting a trail up there in that timber, if you know?

A. It was for the purpose of the buyers' going in there.

Q. Who was to introduce the buyers to the timber, if you know?

A. Mr. Kribs, I believe.

Q. Was it Mr. Kribs?

Mr. LIND.—Wait a moment.

Mr. McCOURT.—He didn't understand.

Q. Who did you understand the buyer to be that was to be introduced to the timber?

Mr. LIND.—If he knows; not guesswork.

Mr. McCOURT.—If he knows. I don't mean to lead him any more than might be necessary under the circumstances.

A. It was Mr. Smith, I believe.

Q. What? A. Mr. Smith, I believe.

Q. How long after you made your filing was it that you started cutting trails up there in the timber?

(Testimony of Basil H. Wagner.)

A. Well, it was about—oh, about three months, I believe; something like that.

Q. Did you handle the axe yourself?

A. Yes, sir.

Q. Did Mr. Tarpley handle an axe?

A. Yes, sir.

Q. You and Mr. Tarpley are not very strong with the axe, are you?

A. Well, we were after we cut that trail.

Q. Do you recall, during the time you were there, whether or not Mr. Smith was there in the timber?

[321—153]

A. He was not.

Q. Not during your time? A. No, sir.

Q. Was Mr. Kribs?

A. Not at the time I was in there; not on the trail when I was there, no, sir.

Q. You didn't stay to await his coming?

A. No, sir.

Q. Do you recall anything in connection with these entries relative to Mr. McKinley having been arrested? A. I do.

Q. Where were you at that time?

A. At Mealey's.

Q. You were out there. And how long did you stay there after that?

A. Well, it was about—oh, several days.

Q. Where was Mr. McKinley arrested?

A. He was arrested in Albany, I believe.

Q. Well, after he was arrested, did you see him?

A. I did.

(Testimony of Basil H. Wagner.)

Q. Where? A. In Albany.

Q. Did he come out to the timber?

A. He did.

Q. Who was with him?

A. I think—let me see—I think he was alone at that time.

Q. Didn't Mr. Kribs come along at that time?

A. Well, I don't know whether he came at that particular time or not.

Q. Well, were you there at any time when Mr. Kribs was out there in the timber? A. Yes.

Q. How long before these proofs were made was it that Mr. [322—154] Kribs was out there while you were there?

Mr. LIND.—What proofs?

Mr. McCOURT.—Final proofs.

A. Let's see—as near as I can recollect—oh, several weeks I presume; several weeks.

Q. Before proofs were made? A. Yes, sir.

Q. Do you remember definitely that it was before proof was made? A. Yes, sir.

Q. Who was in the party when he came out?

A. I believe Mr. McKinley and he.

Q. Was Mr. Tarpley out there?

A. He was.

Q. What did Mr. Kribs do when he arrived out there, or rather where did he stay when he arrived out there? A. Mr. Mealey's.

A. Is that the same Mealey that you had been stopping with, and working with?

A. Yes, sir.

(Testimony of Basil H. Wagner.)

Q. And from the Mealey place, how far was it to this timber?

A. It was presumably eleven miles; that is, part of it; part of it, you see.

Q. How was the trip made from Mealey's to the timber? A. By foot.

Q. Eleven miles by foot all the way?

A. Part of the way. Yes, all the way by foot.

Q. Did Kribs walk?

A. Why, I don't know about that.

Q. What?

A. I don't know. I did not accompany him in through the timber.

Q. Was S. A. D. Puter there? [323—155]

A. Let's see; Puter? I believe not at the time I was there.

Q. Did you accompany Kribs and McKinley back to Albany? A. How is that, please?

Q. Did you accompany McKinley and Kribs back to Albany after that trip—after they had come out there? A. No; no.

Q. You still stayed on in the timber?

A. Yes.

Q. Were you at Albany at the time McKinley had his hearing there? A. I was.

Q. Was Kribs there? A. No, sir.

Q. Where was he? A. I don't know.

Q. Where did you come from to Albany?

A. From Roseburg.

Q. How long had you been in Roseburg at that time? A. Well, a few days.

(Testimony of Basil H. Wagner.)

Q. And did you see Mr. Kribs up at Roseburg?

A. I did see him there, yes.

Mr. LIND.—What occasion at Roseburg? Which occasion—final proof or entry?

Mr. McCOURT.—I think it was the proof.

Q. Was that the occasion of the final proof and the contest at Roseburg?

A. When I met Mr. Kribs at Roseburg, yes.

Q. Was there any hearing or controversy had in regard to some contest? A. Yes, sir.

Q. Over these claims there? A. Yes.

Q. How many days did that engage the attention of yourself and Mr. McKinley, Puter, Tarpley and others? [324—156]

A. Well, several days.

Q. Where was Mr. Kribs during that period, and what was he doing?

A. Well, I can't recall. I don't remember.

Q. Well, was he present there in Roseburg?

A. I think he was.

Q. Did you see him about the Land Office?

A. I did.

Q. While those hearings were transpiring?

A. I did.

Q. Were you acquainted at that time with Josephine Jacobs? A. Yes, sir.

Q. Did you act as a proof witness for her, do you recall? A. I did.

Q. Did she request you to act for her?

A. No, she did not.

Q. Who did? A. Well, I don't know.

(Testimony of Basil H. Wagner.)

Q. What? A. I don't know.

Q. Alvira Jacobs—were you acquainted with her?

A. Yes, sir.

Q. Did you act as a proof witness for her?

A. I think so.

Q. Did she request you to? A. No.

Q. Do you know who did? A. No.

Q. C. Frank Stewart—did you know that gentleman?
A. I did.

Q. Were you a proof witness for him?

A. I was not.

Q. Do you remember whether you were named?
Did you appear at Roseburg as a proof witness for him?

A. No, I cannot recall that if I was. [325—157]

Q. H. C. Barr—did you know him?

A. Yes, sir.

Q. Did he request you to act as a proof witness for him?
A. He did not.

Q. Did you act as one?

A. I was on a number of those entrymen's as a witness, but I cannot recall them now.

Q. Well, now, do you know who placed your name—you do know who placed your name on the list, don't you?

A. It might have been Mr. McKinley.

Q. Were you and McKinley closely associated at that time?
A. We were, in a friendly way.

Q. For how long previously?

A. Oh, since 1896 or '7.

Q. And since that time? A. Yes.

(Testimony of Basil H. Wagner.)

Q. And since you became acquainted with Mr. Kribs, what has been your relations with him?

A. None whatever.

Q. No relation?

A. No, absolutely none.

Q. You go to see him when you come to Portland, don't you? A. Yes, occasionally.

Q. Have done so in the past three or four years?

A. Yes, sir.

Cross-examination.

(Questions by Mr. LIND.)

Did you ever ask or solicit Kribs for money?

A. Sir?

Q. Did you ever ask or solicit Mr. Kribs for money? A. No, sir.

Q. Did he ever offer you any money as an inducement to do anything for him? [326—158]

A. Yes, sir.

Q. When?

A. It is several years ago. We were interested to the agency of H. T. Dow in Eugene, in some timber, and on that occasion I asked him for money for business purposes.

Q. Well, you mean by the way of a loan, or how, or what?

A. Yes; that is, to expedite a little business, that is not relative to this, you see.

Q. I had reference to any of these land matters that you testify to here. A. Oh, no, no.

Q. This forenoon or this afternoon?

A. No, sir.

(Testimony of Basil H. Wagner.)

Q. Did he ever offer to give you any money, or any consideration, if you would do any particular thing, make any affidavit, or anything of that sort?

A. No. That is, with the exception of the Stratford—when I appeared before Stratford, Special Agent Stratford.

Q. Well, now, tell us about that exception. Tell us the whole facts.

A. Or Mr. Wilson. When I went to the Imperial Hotel, or the Portland Hotel, after I got through with my work, that is, to signing this affidavit, I was paid \$25 by Mr. Kribs.

Q. Had there been any talk about that before that?

A. Excepting through Mr. McKinley suggested.

Q. Suggested what?

A. That I might go to Mr. Kribs and receive a little consideration for expenses for the time that I was out.

Q. Well, was that after or before you had given your affidavit?

A. That was afterward.

[327—159]

Q. What expenses had you been to?

A. From Salem to Portland—railroad fare and things of that sort. That was in regard to the Wilson affidavit.

Q. How?

A. That is in regard to the Wilson affidavit.

Q. And he paid you \$25?

A. Yes, sir.

Q. There had been no suggestion beforehand that he would pay you, or anything of that kind?

(Testimony of Basil H. Wagner.)

A. None whatever.

Q. Now, you have made a number of affidavits here, apparently somewhat conflicting, and conflicting with your stestimony perhaps given here on the stand. Now, where does the truth lie? At the time that you made this entry, filed on this claim, did you have any bargain with Mr. McKinley that the claim was for him, or did you just take the claim on his suggestion? A. I took it on his suggestion.

Q. What did you intend to do with it?

A. I intended to make a profit out of it.

Q. How?

A. As soon as he could dispose of it.

Q. To whom?

A. I didn't know at the time.

Q. Did he know?

A. I don't know whether he did or not, at the time the entry was made.

Q. What was the actual conversation between you and McKinley before you took this claim?

A. Mr. McKinley asked me if I would care to take up a timber claim.

Q. Yes.

A. And there probably might be \$75—there would be a consideration [328—160] in it. And I accompanied him to Roseburg, and made entry, and then I came back to Salem. Then afterward I went up to the Mealey boys' place—the Mealey's—stayed there a while, and cut a trail, and came back to Albany, and then to Roseburg; then to Salem.

Q. Now, did Mr. McKinley say to you, or did you

(Testimony of Basil H. Wagner.)

understand from him, how this claim was to be handled—how the money was to be raised to pay for it? What did he tell you in that regard?

A. That he would seek a buyer.

Q. Yes.

A. And probably there might be profits accrue, and finally he told me—

Q. Was it understood between you that if there were profits, you would divide?

A. There would be a division. That is, there was a certain consideration he named—it was \$75 at least.

Q. Yes.

A. And more if the sale of the land—if the consideration would be enough, you see.

Q. Did he tell you at the same time that he would take out \$100 for his locating fees?

A. I believe he did.

Q. And the expenses; and if the claim was eventually sold for more than that, why, you would share the profits? Did he say something of that kind, or didn't he?

A. He told me if I helped him out that I would receive something.

Q. Helped him out how?

A. That is, by—being with him, and all this and that; more in a friendly way than anything else.

[329—161]

Q. In these preliminary talks before you went to Roseburg, did he ever say a word about selling the claim, signing over the claim to him?

(Testimony of Basil H. Wagner.)

A. He was to handle this business.

Q. As your agent? A. Yes, sir.

Q. In disposing of the claim, if there was a good chance to sell? A. Yes.

Q. Now, during the time before sale, after entry and before sale, would you have felt at liberty to sell to anybody for a good offer?

A. No, I would not.

Q. Why not?

A. Because there was a mortgage on those lands.

Q. No; no, I mean before the mortgage was given, between the time that you filed and the time that you went to Roseburg and proved up on the claim, if you had received a good offer for your filing, for your interest in the land, would you have felt at liberty to sell? A. Yes, I believe I would.

Q. Well, would you or would you not?

A. Yes.

Q. Was there anything in your understanding with McKinley to hinder you from making a sale?

A. There was not.

Q. If you had made the sale of the claim, what would he have been entitled to out of the proceeds?

A. Well, I don't know.

Q. Did he say anything about the amount that he was to have for his location fees?

A. No, there was nothing definite in that regard.

Q. What was the usual sum paid to a locator?

[330—162]

Mr. McCOURT.—Object to that as immaterial.

Q. Well, was there a customary price in that

(Testimony of Basil H. Wagner.)

vicinity paid to locators for locating a man on a piece of timber land, or any other piece of Government land?

A. I don't know. I don't know in that regard.

Q. You don't know?

A. No. Probably \$100—something like that.

Q. Well, was that the understanding? Was that the usual amount that was paid to locators?

A. Well, the men that were operating in that country, they could tell you better than I could. I don't know.

Q. Well, you knew something about the land business, did you not?

A. A little yes, in a clerical way.

Q. You had been in the Land Office, had you not?

A. Yes.

Q. Clerk in the Land Office? A. Yes.

Q. Where? A. Salem, Oregon.

Q. Had you had anything to do with the making out of papers concerning Timber and Stone entries?

A. No, sir.

Q. What was your work in the Land Office?

A. Why, just simply of a clerical nature—copying and things of that sort.

Q. You were familiar with the land laws in a general way, were you, or were you not?

A. I was in regard to the State land laws, yes.

Q. Oh, just State land laws.

A. School land office.

Q. It was not in the United States Land Office you worked?

(Testimony of Basil H. Wagner.)

A. It was not in the Government Land Office, no, sir.

Q. When you filed on this land, did you file on it for your [331—163] own benefit? A. I did.

Q. Or for somebody else's benefit?

A. My own. My own use and benefit.

Q. When was it first suggested to you that Willd might buy it, or would buy it?

A. By Mr. McKinley in Roseburg.

Q. At the time of the final proof?

A. Yes, sir.

Q. Was that the first time that there had been any conversation between you and McKinley in regard to any sale of the land? A. It was directly, yes.

Q. Well, now, what had there been indirectly, if anything, before that time?

A. I don't—can't recall it. He had interested Mr. Kribs in this matter, I believe. He had spoken to me about that.

Q. When did he speak to you about that?

A. That was—oh, it was prior to the final proof.

Q. How long prior to the final proof?

A. Why, it was some weeks probably. I have forgotten—it is so long ago.

Q. How long after the first entry? Perhaps you can locate it better that way. I mean, the filing.

A. Well, it was probably—oh, about a month, I guess, something like that, or maybe longer. I have forgotten—it has been so long ago.

Q. What did he say about Kribs?

A. He said that he had a buyer by the name of Mr. Kribs, or could interest him in the matter of tak-

(Testimony of Basil H. Wagner.)

ing up these claims—buying them. [332—164]

Q. What else did he say, if anything?

A. That is about all he said in that regard.

Q. That he might buy them?

A. Yes; might handle them.

Q. Or handle them? A. Yes.

Q. Now, when you signed this affidavit made before Burns, under what circumstances was that signed? Tell the Court briefly and frankly?

A. I came to Portland and signed those affidavits—the affidavit to Mr. Heney and Burns—not thinking that the statute of limitations had expired.

Q. Well, now, you are frank—go on.

A. And so I rushed in there and signed this affidavit, or made it, as near as I could remember. And after the lapse of years one is forgetful about those things—I know I am—not having paid attention to those things up to that time, and being naturally more or less timid.

Q. Now, at the time you signed that affidavit, the grand jury was in session, was it not?

A. It was, yes.

Q. In the Federal Court in this city. Mr. Heney, the Government prosecutor, was here prosecuting evil doers in connection with the public lands?

A. Yes, sir.

Q. Mr. Burns was his right-hand man and detective. Who took you in charge when you arrived in the city—who introduced you to Mr. Burns?

A. Mr. Tarpley.

Q. Mr. Tarpley. Now, what was your object in going to Mr. Burns?

(Testimony of Basil H. Wagner.)

A. Well, I thought I would go there and make a clean breast [333—165] of it in a sort of way, you know, to kind of square this thing up, if I could.

Q. For what purpose?

A. Well, to get it straightened out.

Q. To get what straightened out?

A. This land deal.

Q. To get immunity from prosecution?

A. Partially, yes.

Q. Well, now, to get that immunity, did you tell the truth or did you stretch the truth?

A. I told the truth, as near as I could remember it.

Q. You say in that affidavit, if I understood your answer correctly, that you sold—that you agreed to sell this claim to McKinley for \$75. Now, did you ever make any such agreement?

A. To sell it to McKinley for \$75?

Q. Yes.

A. Why, no, not to sell it to him for \$75.

Q. Well, what did you say then? May I have that affidavit a moment?

A. To sell it? By George, I didn't.

Q. "McKinley told me at the time that I would receive \$75 for making the entry."

A. Yes, sir.

Q. That is what you are made to say in this affidavit. By the way, who drew up that affidavit?

A. I think—let's see—

Q. That is the one taken before Burns?

A. Why, Burns drew up that affidavit.

Q. Who dictated it—you or Burns?

(Testimony of Basil H. Wagner.)

A. He did.

Q. What was the condition of your nervous system? Did you [334—166] know whether you were afoot or horseback at the time?

A. I was a good deal of horseback, I guess.

Q. Now, as a matter of fact—

A. No, I was a little frightened.

Q. Now, as a matter of fact, did McKinley ever tell you that you were to turn over the claim to him before you made the entry, or afterwards?

A. I left that to his discretion. He was my agent.

Q. That does not answer the question. You can answer that question.

A. I told him he might do that.

Q. Do what?

A. Sell it for \$75, if he wished.

Q. If you could realize that out of it?

A. Yes, sir.

Q. When did you tell him that?

A. In Roseburg.

Q. At the time of the final proof?

A. Yes, sir.

Q. As a matter of fact, when you went into this, you and McKinley were friends? A. Yes, sir.

Q. You wanted to make what you could out of the claim, and were willing that he should handle it for you—is that it? A. Yes, sir, that is correct.

Q. If he made sale of it later on, you would be satisfied? A. Yes, sir.

Q. Was there a word passed between you, or any understanding directly or indirectly, that you could not have sold it if you had had an opportunity to sell?

(Testimony of Basil H. Wagner.)

A. Before the transaction was consummated, McKinley came to me and asked me if I was satisfied.

[335—167]

Q: To sell?

A. With the \$75—to sell for the \$75—and I said yes.

Q. When was that—at Roseburg?

A. Yes, sir.

Q. Well, was that at the time of the final proof?

A. It was.

Redirect Examination.

Q. He gave you \$100, didn't he?

A. Afterwards, yes. He gave me a little more money afterwards. I received some more after this \$75.

Q. Well, Tarpley and McKinley and Puter took you up and introduced you to Burns, didn't they?

A. They did.

Q. You were not afraid of any of them?

A. No.

Q. And a few days later, you became a sort of clerk or assistant of Mr. Burns?

A. I worked under him awhile, yes.

Q. And you didn't feel in any particular awe of him, did you? A. No, not afterward.

Q. And you intended then, and you say now that you did tell the truth, as nearly as you could remember it at that time?

A. As nearly as I could remember it.

Q. That was five years—four years ago, wasn't it? Five years ago?

A. It is five years ago, yes.

(Testimony of Basil H. Wagner.)

Q. Your memory was just as fresh then as it is now about those transactions?

A. Well, nearly, yes.

Q. Isn't it a fact that when you went into the transaction you expected to get \$75 out of it, and were told so by McKinley?

A. Correct.

[336—168]

Q. And when it had been concluded, you had not spent a cent upon it, and you had got just what you started in to get?

A. Correct.

Q. You did not know what McKinley was going to do with the land? That is, you did not know whom he was going to transfer it to in the beginning, and you did not know when it was concluded whom it had been transferred to?

A. That is right.

Witness excused. [337—169]

[**Testimony of Neal Dozier, for the Government.**]

NEAL DOZIER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Dozier?

A. I live at Pendleton.

Q. How long have you lived at Pendleton?

A. About seven years, I think—eight years.

Q. Where were you living in January, 1900?

A. Living in Roseburg.

Q. How long did you continue to reside there after that date—say January, 1900?

A. About six or seven months, I think.

(Testimony of Neal Dozier.)

Q. What business were you engaged in there at that time?

A. I was working in a butcher-shop awhile; working in a wire house awhile—laboring.

Q. Did you own any property there at the time?

A. No.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Daniel W. Tarpley? A. Yes, sir.

Q. S. A. D. Puter? A. No, sir.

Q. Don't know that gentleman?

A. Just know him when I see him.

Q. Do you know Fred Kribs? A. Yes, sir.

Q. How long have you known him?

A. I met him last summer about five minutes.

Q. Is that the first time you met him?

A. The first time I ever met him in my life.

Q. Do you remember the incident of making a timber and [338—170] stone entry of lands in Linn County, Oregon? A. Yes, sir.

Q. In 1900? A. Yes, sir.

Q. Tell the Court the circumstances under which you took the claim, and surrounding the taking of the same.

A. There was a friend of mine of the name of Jaggy asked me if I didn't want to take a timber claim—said there was a fellow here located people—give me a chance to make a little money out of it.

Q. How much money?

A. I think he said \$50 at that time. I told him I did. So the next morning, I believe it was, he introduced me to him.

(Testimony of Neal Dozier.)

Q. To whom? A. Mr. McKinley.

Q. Where was that?

A. In a saloon. We went out back of the saloon then, and he explained the circumstances to me, and I took him up.

Mr. LIND.—Speak louder, please.

Q. Where were you introduced to him—what part of the saloon?

A. In the front part of the saloon.

Q. Where did you have your conversation?

A. In the back yard, back of the saloon.

Q. Who was present? A. Nobody.

Q. Just you and McKinley?

A. That is all.

Q. After that conversation, what did you do?

Mr. LIND.—Well, what was said?

Mr. McCOURT.—Never mind. I am examining this witness.

A. Well, I don't remember, when I filed on the land—somewhere close to that—two or three days maybe—that I filed.

Q. And did you ever go to see the land?

[339—171]

A. Yes, sir.

Q. When, with reference to the time you filed?

A. Well, it was some days afterwards—I couldn't say how long afterwards—I went down, and went up and looked at the land.

Q. How did you get there?

A. Why, I went on the train.

Q. Who was in the party that you knew?

A. Well, there was several in there. I can men-

(Testimony of Neal Dozier.)

tion some of the names.

Q. Well, mention all you can recall.

A. There was Johnny Jaggy, Jim Doty, and Ira Pilkington.

Q. Who else?

A. A man by the name of Zebulon Smith.

Q. Anybody else?

A. That is all I can recall just now.

Q. Who was piloting the party—looking after their welfare?

A. I don't remember. I believe Mr. McKinley told me that evening to go; several of us went together. I don't remember who piloted us.

Q. Where did you leave the train?

A. At Halsey.

Q. Then what occurred?

A. Well, we got in rigs, and went up to this land—stayed all night.

Q. Were the rigs waiting for you when you got there?

A. Well, I believe some of them was, and some of them come later on.

Q. Who were the drivers?

A. I don't remember.

Q. Whose place did you stay at when you got up to the land?

A. Well, I don't know the boys' names. I know them when [340—172] I see them in town.

Q. Around here now, are they?

A. I see one of them the other day, yes.

Q. Mealey? A. Mealey, yes.

Q. What did you do after you got to Mealey's?

(Testimony of Neal Dozier.)

A. Well, we stayed all night, and the next day we went out and looked at this land.

Q. Who showed you upon the land?

A. Mr. Tarpley showed me. There was two or three fellows along.

Q. Who were the other fellows?

A. I don't remember their names, and I don't know them if I would see them.

Q. Well, what did you do after you had inspected the land?

A. Well, I went back to Roseburg, and later on I made final proof on the land.

Q. How did you ascertain when to make final proof?

A. I don't remember exactly how, but I suppose somebody told me.

Q. Did you have anything to do with publishing a notice in the newspaper? A. No, sir.

Q. Or procuring witnesses for your final proof?

A. I believe Mr. McKinley said he would act as a witness, and somebody else. I don't know who the other fellow was—I forget now.

Q. Where did you make your final proof?

A. In the Land Office.

Q. Did you see Mr. McKinley just before you went into the Land Office? A. Yes, sir.

Q. Did you see Mr. Tarpley? [341—173]

A. I don't remember, but I think I did.

Q. Have any conversation with Mr. McKinley?

A. Yes, sir.

Q. What about?

A. Well, he told me to go up there and prove up.

(Testimony of Neal Dozier.)

There were several of us went up together.

Q. Did he instruct you how to prove up?

A. I believe he told me what I would have to do to prove up, yes.

Q. What did he tell you you would have to do more particularly that you remember?

A. Well, I don't remember him telling me anything in particular. They would ask me questions, and I was supposed to answer them, I guess.

Q. Did he have a blank form there in which he told you the questions that would be asked you?

A. No, sir.

Q. He did not? Now then, you went into the Land Office to prove up, and who was there that you knew?

A. I remember a fellow by the name of Adkison and Ira Pilkington.

Q Was Smith—Zebulon Smith—and Jaggy there?

A. I saw them there that day; but they were the only two I remember sitting there alongside of me—these two were sitting down beside of me; I remember them.

Q. Was McKinley there?

A. He was in and out of there. I remember seeing him.

Q. Tarpley?

A. I can't say for sure about Mr. Tarpley, but I believe he was there that day.

Q. Well, after you had made the proof, who paid for the land? [342—174]

A. Mr. Tarpley paid me.

(Testimony of Neal Dozier.)

Q No, who paid the Land Office?

A I don't know.

Q. Did you pay it? A. No, sir.

Q. Who paid the expenses of going up to look at that land?

A. Mr. McKinley, I suppose. He said he would look after that.

Q. Did you pay out any money in connection with the claim, of any kind?

A. No, I don't believe I did.

Q. Did you pay any newspaper for publishing the notice of proof? A. No, sir.

Q. Well, when you got through proving up there, where did you go—what did you do?

A. I went down town.

Q. Well, when was it you saw Mr. Tarpley in connection with the transaction after the proof?

A. Well, I don't remember whether it was the next evening, or the next evening after that. It was either the next evening or the next evening after.

Q. How much did he pay you?

A. He gave me \$75.

Q. Did you sign any papers?

A. Well, I did in a day or two after that.

Q. What did you sign?

A. Well, I really couldn't tell you what it was.

Q. What did you think you were signing then?

A. Well, I forget. I knowed what it was then, but I don't know now. I read the paper over and signed it. I don't remember what it was.

Q. Was Jaggy there?

A. No, sir. [343—175]

(Testimony of Neal Dozier.)

Q. Just Tarpley alone?

A. Tarpley wasn't there then at all.

Q. Oh, he wasn't there when you signed the paper?

A. No, sir.

Q. You signed the paper after you got your money?

A. Yes, sir.

Q. Who was there at that time, when you signed the paper?

A. McKinley and a lawyer, I forget his—Shupe, I think, was his name.

Q. Was that in Shupe's office?

A. Yes, sir.

Q. Well, did you sign any more than one paper that you remember?

A. Yes, I remember signing some other papers—a notice and something else.

Q. Did you sign all the papers that you did sign at the same time?

A. No, sir.

Q. How far apart were the signatures given? How many days apart?

A. I don't remember. It was a few days apart. I could not say for sure whether it was one day, or two days, or a week.

Q. Just a few days? Did McKinley come and get you to sign the papers both times?

A. Yes, I think he did. I am pretty sure he did.

Q. Was it the same day that you made proof that you got the \$75?

A. I think it was the next morning, or the next evening after that. No, it was not the same time, I don't believe. No, I know it was not.

Q. How did Mr. Tarpley pay you that money?

A. In gold. [344—176]

(Testimony of Neal Dozier.)

Q. What? A. In gold money.

Q. Now then, when you had this talk back of that saloon there with Mr. McKinley, about this transaction, what did he tell you there?

A. Well, I can't remember all he said. We talked there for quite a long time. But he give me to understand he wanted me to take up this claim, and he would furnish the money, and when I got ready to sell, to give him a chance at it.

Q. Did you understand from that conversation there, that the lands was to be transferred to him, or somebody for him, and you to get \$75 for it?

A. He said to give him a chance at it, yes.

Q. Now, then, did you ever ask anybody else to lend you any money on that? A. No, I didn't.

Q. Did you ever try to sell it to anybody else?

A. No, sir.

Q. Did you ever have any further conversation with Mr. McKinley as to what you were going to do with the land, until you did actually deed it to him?

A. Yes, sir, I did once.

Q. When was that?

A. I think it was the day before I proved up.

Q. You made him raise from \$50 to \$75?

A. No, sir, he had already raised.

Q. Oh, he had already raised it? When did he raise the price?

A. Well, I don't know. It was a few days before that, before I proved up.

Q. Did you indicate to him that \$50 was not enough? A. No, sir.

Q. How did he happen to raise? [345—177]

(Testimony of Neal Dozier.)

A. I couldn't say.

Q. Do you recall that there was a contest about the claims down there?

A. Something like that—there was just a rumor around. Some of the boys told me—some of the other boys.

Q. Did you understand that that had something to do with it?

A. Well, I thought maybe it did. I didn't know.

Q. Now, when you got this \$75, did you ask for any more money?

A. No, sir.

Q. When they asked you to come and sign a deed, did you make any?

A. No, sir.

Q. Did Tarpley say anything to you about that being for the sale of your land, when you got the \$75?

A. Yes, sir.

Q. What did he say?

A. What is that?

Q. What did Tarpley say when he gave you the \$75?

A. He said he was much obliged to me, and if we could do anything later, he would see me again.

Q. You hadn't yet turned the land over to him, or mortgaged it either?

A. Well, I don't think I had.

Q. So after he had given you \$75, in addition to furnishing all your money, then you made a mortgage?

A. Well, I can't say for sure whether it was after or before.

Q. What was the explanation of why you should give a deed a couple of days later?

A. Well, sir, he just come along and says, "I

(Testimony of Neal Dozier.)

want you to [346—178] go up to the office a little bit," and talked to me a little while—"and sign the papers." That was Mr. McKinley. And I went up with him, and signed them.

Q. Did you make any objection to signing the papers? A. No, sir.

Q. Went right along? A. Yes, sir.

Q. You understood that to be part of the transaction? A. Yes, sir.

Q. Did you understand that you had any deed to sign when you signed the mortgage?

A. I can't say that I did.

Q. You thought that was the end of it?

A. I can't say now. I don't know. I might have thought different, but I can't say now what I thought.

Q. You just waited for instructions, and did as you were directed by Mr. McKinley in the transaction? A. Yes, sir.

Cross-examination.

(Questions by Mr. LIND.)

I wish you would give us the conversation—that first conversation that you had with Mr. McKinley, in full, what was said by him and what was said by you in regard to this proposition.

A. Well, I can't remember everything. It is a long time ago.

Q. No, but I mean what you can remember.

A. Well, he told me he wanted to locate me on this piece of land, or asked me if I wanted to take a piece of land, one—I don't remember exactly that—I told him I did. And he told me that he could locate

(Testimony of Neal Dozier.)

me on this land and how much there was in it.

[347—179]

Q. What else?

A. He says, "I will furnish the money, and when you get ready to sell, I want you to give me a chance at it."

Q. He wanted you to give him a chance to handle it? A. Yes, sir.

Q. Sell it for you? A. Yes, sir.

Q. Did you say you would? A. Yes, sir.

Q. Was that all the talk you had on that first occasion?

A. No. We talked there quite awhile. I don't remember everything we said.

Q. Well, try to remember as much of that first conversation as possible. It is important.

A. Well, I think I gave you about the outline of it. I cannot remember everything we said.

Q. Did he tell you that he wanted you to make the location for him—make the filing for him, or for yourself? Whom did you make that filing for—for McKinley or for yourself?

A. Why, I made it for myself, I suppose.

Q. How?

A. I suppose I made it for myself.

Q. Well, is that what you intended?

A. Yes, sir.

Q. Now, after you had made the filing, did you have any conversation with any of the others who had made similar filings in regard to raising the money for making final proof elsewhere than through McKinley?

(Testimony of Neal Dozier.)

A. Well, I believe I talked about it different times, but I don't remember what was said about it.

Q. Did you have a conference with Mr. Pilkington and two or three others, to pool your claims and borrow the money elsewhere than through McKinley?

A. Well, I remember talking one day about this proposition [348—180] if he didn't pay us any more money than this \$50, that we would see if we could not get another buyer.

Q. You would see if you could not what?

A. Get another man to buy this land.

Q. When was that? Before final proof or after?

A. Well, it was before final proof.

Q. Was it after you had made the entry?

A. Yes, sir.

Q. What did you understand you would get out of the mortgage, in the first conversation? Did McKinley tell you that he would get some one to loan the money to put a mortgage on the land for the final proof money and expenses?

A. I think that is the way he expressed it. It is something like that. He said he would furnish the money, and he would guarantee me \$50, and he thought he could do a little better.

Q. Did he say how much he expected to place the mortgage for?

A. No, he didn't at that time.

Q. When did he next mention the subject of mortgage to you?

A. Well, about the day—along about the time I proved up.

(Testimony of Neal Dozier.)

Q. What did he say then?

A. Well, he said he would have to mortgage this land—we would raise the money, and for me to sign these notes he was telling me about. That is all I know.

Q. And you did so? A. Yes.

Q. At that time did you regard the land as yours or McKinley's?

A. I regarded it as mine in a way, yes—as my right. I was looking to him to do the business part of the transaction.

Q. Did you expect him to sell it for you?

A. Well, yes, I expected him to sell it for me
[349—181]

Q. How long had you known McKinley?

A. At that time?

Q. Yes.

A. Well, I just met him that morning I was telling about, the first morning I ever remember talking to him.

Q. Before you made the filing?

A. Yes, sir.

Redirect Examination.

Q. You did expect him to sell it for you?

A. Yes, sir.

Q. Did you ask him what he had sold it for when he came around to get you to sign a deed?

A. No, sir.

Q. Did you notice how much the mortgage was for, or pay any attention to it?

A. Yes. I read it over.

Q. Did you ask him where the balance of the

(Testimony of Neal Dozier.)

money was going to? A. No, sir, I did not.

Q. Didn't care anything about that, did you, as long as you got your \$75? A. No.

Q. Now, then, the talk you had with Pilkington and those fellows was that you would look around and see if you could not get a buyer that would pay you more than \$50, that McKinley had promised to you? A. He told me to himself.

Q. Pilkington? A. McKinley did.

Q. What was he to get out of it if you did sell it?

A. I was to give him his money back.

Q. What money? [350—182]

A. That he was out on me.

Q. Was he to take you up there in Linn County, take you out on the land, pay your publication fees, tell you when to go to Linn County, tell you when to prove up, make out all these deeds, and just get his money back?

A. He said if I sold it to anybody else, why, he would expect his money back out of it.

Q. Well, I should think he would. Weren't you to pay him any location fee of any kind?

A. No.

Q. Nothing at all? Whose saloon was that that he visited there and met you in?

A. Thompson's.

Q. Thompson's saloon? A. Yes, sir.

Q. Thompson took an entry too, didn't he?

A. I believe he did.

Q. What was Doty's business there at that time?

A. I think he was a plumber.

Q. What was the business of Jaggy?

(Testimony of Neal Dozier.)

A. He was a bartender.

Q. And Zebulon Smith?

A. He was a waiter on a table.

Q. And Ira Pilkington?

A. He is a blacksmith.

Q. And Adkison? A. Blacksmith.

Q. And what did you say you were doing?

A. I wasn't doing anything then. I had been working in a wirehouse and in a butcher-shop.

Q. You worked in that same Thompson's saloon part of the time, didn't you? A. Yes, sir.

[351—183]

Mr. McCOURT.—I wish to introduce the deed and mortgage, like all the rest of them, of Neal Dozier to Frederick Kribs and John A. Willd.

Marked "U. S. Exhibits 65 and 66."

Witness excused. [352—184]

[**Testimony of Henry Blakely, for the Government.**]

HENRY BLAKELY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Mr. LIND.—This witness is a defendant in the case, and appears by other counsel. I have not conversed with him, and do not care to examine.

Q. Where do you live, Mr. Blakely?

A. Brownsville.

Q. How long have you lived at Brownsville, Mr. Blakely? A. Fifty years and over.

Q. What is your business?

A. Well, I used to be a farmer.

No. 1973

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FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD. (IN FOUR VOLUMES.)

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CHARLES A. SMITH,
Appellants,

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VOLUME II.
(Pages 337 to 752, Inclusive.)

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(Testimony of Henry Blakely.)

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Daniel W. Tarpley?

A. Well, I knew a fellow by that name at one time. I see a fellow down here they call that, but he don't look like he did when I knew him.

Q. You saw him when you came down here one time? A. Yes, sir.

Q. How long ago? When was that?

A. You mean when Mr. Burns was here?

Q. Oh, yes. You met Mr. Burns, too, did you?

A. Yes, sir.

Q. Do you know Fred Kribs?

A. I met him since I have been here in town.

Q. You mean since you have been here this last time? A. Yes, sir. [353—185]

Q. Did you meet him about two years ago when you came down here? A. No, sir.

Q. Didn't meet him?

A. Not that I know of.

Q. S. A. D. Puter—do you know him?

A. No, sir.

Q. Never met that gentleman?

A. No, sir.

Q. How long have you known Mr. McKinley?

A. Well, I have known him ten or fifteen years, I suppose—ever since he came here to the country.

Q. Do you remember, Mr. Blakely, the incident of filing upon a timber claim up in Linn County?

A. Yes, sir.

Q. In the year 1900, along in January or February? February 26th, I think.

(Testimony of Henry Blakely.)

A. Yes, sir.

Q. You say you do remember that?

A. Yes, sir.

Q. Will you please tell the Court, Mr. Blakely, who it was suggested that you take the claim?

A. Well, Mr. Harrison is the first man that spoke to me about it—said Mr. McKinley had 'phoned him that he had seven claims up there.

Q. Seven claims? A. Yes, sir.

Q. What Mr. Harrison was that—John Harrison?
A. Yes, sir, John Harrison.

Q. Seven; what kind of claims?

A. Timber claims.

Q. Well, what had that to do with you?

A. Well, I wanted one myself.

Q. What did he want to do with them—McKinley?
A. I don't know about that. [354—186]

Q. Well, what did you do when Harrison told you that?

A. Well, I went over to the 'phone, and called McKinley up, and talked to him over the 'phone.

Q. Then, what was said?

A. Well, I asked him what there was in that—in them timber claims—as near as I remember; and he said there was about \$75.

Q. Well, then, what happened? What did you do then?

A. Well, I says, "Ain't there more than that in it?" I says, "There ought to be more than that in it," or something like that.

Q. What did he say then?

(Testimony of Henry Blakely.)

A. Well, he said he didn't know whether there was or not.

Q. Well, what did you do then?

A. Well, he came up there—or he didn't—he 'phoned to us then that he would meet us at Mealey's.

Q. Well, but you did something before that. Whom did you go and see then, before you went?

A. I went and seen Frank Burford and Jim Cooley and my son.

Q. What is your son's name, now?

A. Hugh. Hugh Blakely.

Q. Hugh Blakely?

A. Hugh Blakely, yes, sir.

Q. Who else? A. Billy Stillwell.

Q. Billy Stillwell some relation of yours?

A. Yes. He wasn't at that time, though.

Q. What did you say to them when you went to see them?

A. I told them Mr. McKinley had these claims up there—seven claims.

Q. What else did you tell them? [355—187]

A. I asked them if they wanted to go up and take one.

Q. Did you tell them how much McKinley said would be in it? A. Yes, sir.

Q. Then, what did you do then?

A. Well, we went up there and located. I had taken my team and taken them up there, all of them.

Q. You took them up to Nealy's? Now, where did you go from Nealy's?

A. From Nealy's we went up onto these claims, I suppose.

(Testimony of Henry Blakely.)

Q. Who took you to show you the claims—show you the numbers? A. Tarpley.

Q. Did he have the numbers there upon paper, or how did he know how to go and show them to you?

A. Well, I couldn't tell you that, how he knew.

Q. How did he know which would be Blakely's claim, or which would be Burford's claim, or Stilwell's?

A. Well, he had taken us all—he had taken me on a claim separate there, I suppose he did all the rest of them—showed me the corners—said: "There is your corners."

Q. How far from Nealy's was this claim he showed you?

A. We left in the morning pretty early, as quick as it was light, and we got back late in the evening.

Q. Do you know about how far you had travelled away from Nealy's before you got to your claim, say?

A. Well, we thought it was a long ways. I don't know. We was gone all day. It was up the mountain.

Q. Well, after you had looked at those claims, then where did you go from Nealy's? [356—188]

A. We came back home.

Q. To Brownsville? A. Yes, sir.

Q. And how long did you remain there before you took another step in the transaction?

A. Well, I couldn't say about that, how long.

Q. Well, about? I don't care for a day or two, or a week. Just as you recall it now, where did you next go to, and what did you do?

(Testimony of Henry Blakely.)

A. Well, we next went out to Roseburg to file on those claims.

Q. All seven of you? A. Yes, sir.

Q. That was Mr. Stilwell, Mr. Burford, Mr. Harrison, Mr. Cooley, Hugh Blakely,—

A. And Mr. Harrison's son, Earnest.

Q. Where did you take the train?

A. At Halsey.

Q. How did you get to Halsey?

A. I don't remember that.

Q. Didn't you take your team?

A. Well, I cannot remember whether we took my team, or whether we had got another team.

Q. How did you happen to take your team out there to Nealey's?

A. Well, I had a team of my own. I had just taken my own team.

Q. All right. When you got to Halsey, whom did you see there?

A. We didn't see anybody at Halsey.

Q. Did you see McKinley?

A. No, sir, not in Halsey. [357—189]

Q. Where did you see him?

A. Saw him on the train after we got on.

Q. Did the party buy tickets at Halsey?

A. No, sir. Mr. McKinley 'phoned to me and told me not to get any tickets; that he had special rates, that he could get them cheaper than we could.

Q. Had an arrangement with the Railroad Company? A. I don't know about that.

Q. All right. You got to Roseburg then and

(Testimony of Henry Blakely.)

filed? A. Yes, sir.

Q. Where did you stop in Roseburg, do you remember?

A. Well, we stopped at a hotel there.

Q. Who paid the expenses for the party?

A. For filing?

Q. For the party at the hotel?

A. At the hotel?

Q. At the hotel.

A. I couldn't tell you. They was paid by somebody.

Q. Well, your ticket back—did you buy any tickets coming back? A. No, sir.

Q. Did McKinley come back with you?

A. Well, I wouldn't say whether he did or not. I think we had return tickets.

Q. Did you publish any notice of proof, or anything of that kind, in regard to the claim?

A. No, sir.

Q. Never did that? Do you know who did it?

A. Yes, sir.

Q. Who did? A. Mr. Brown. [358—190]

Q. What? A. Editor Brown.

Q. Editor Brown published it in his paper, but who paid him?

A. Why, he told me that McKinley paid him. I asked him.

Q. What was the next thing that was done? When did you next hear from these claims, and who told you about them?

A. Well, we next heard from them, I suppose,

(Testimony of Henry Blakely.)

when we went out to prove up on them.

Q. But who told you it was time to make proof?

Who notified you to go up there, when to go?

A. I couldn't tell you.

Q. Did you all go together again?

A. Yes, sir.

Q. Where did you take the train?

A. At Halsey.

Q. Who was there when you got there?

A. McKinley was on the train.

Q. Did you buy tickets that time?

A. No, sir.

Q. Well, after you got to Roseburg, what did you do?

A. Well, we got to Roseburg, I think, it was early in the morning, or in the night some time, and the next morning we went up and proved up on the claims.

Q. The whole party? A. Yes, sir.

Q. Did you see Mr. McKinley there?

A. Yes, sir.

Q. And where did you stop that time?

A. We stopped at the same place, I think, when we was out, as we did before when we was out.

Q. Who paid your expenses then?

A. I don't know. [359—191]

Q. Well, did you pay any money to the land officers there at Roseburg next day when you proved up?

A. No, sir.

Q. Or did any of the other party?

A. Well, I couldn't say for the other party. I did not.

(Testimony of Henry Blakely.)

Q. Do you know who paid them?

A. Well, McKinley said he would pay them.

Q. Well, after you made your proof, what happened? A. Well, in regard to what?

Q. In regard to the claim—timber claim.

A. Well, the rest of the boys there, the boys was all single fellows outside of, I think of Mr. Harrison and I—John Harrison—they wanted to sell their claims, and did sell them, now, that day, I think.

Q. What?

A. They sold them there that day, I think.

Q. To whom?

A. Well, I couldn't tell you that.

Q. Were you present when they executed the deed?

A. Well, I don't know whether I was or not.

Q. Did they tell you what they got for them?

A. Well, the understanding was, I think, that they got \$75.00 outside of all expenses.

Q. That same \$75.00 that you told them they would get before they ever went down there to Nealey's at all? A. I suppose so.

Q. Well, what did you do with yours?

A. I sold mine.

Q. That same day?

A. No, I don't think so, hardly. [360—192]

Q. What? A. I don't think so.

Q. Well, did you get the pay for yours that day?

A. I don't think so. I wouldn't be positive on that.

Q. Well, what did you get for yours?

(Testimony of Henry Blakely.)

A. I got \$110.

Q. How much did you get for your claim?

A. Well, I got \$110 outside of all expenses.

Q. That \$110 included services that you had rendered, didn't it, team hire, and one thing and another?

A. Well, yes, they was to pay me for the team hire.

Q. Whatever there was over the \$75.00 there, up to the \$110 was services that you had rendered for them, furnishing team and looking after the transaction?

A. Well, I had just taken my team from Brownsville to Mealey's, that I am sure of; but about to Halsey, I wouldn't say—I don't know.

Q. You don't remember that? A. No.

Q. Whom did you deed the land to?

A. Well, I wouldn't say positive whom I deeded it to, but we talked it over amongst ourselves.

Q. Well, I know, but whom did you think you were deeding it to at the time?

A. Well, a man by the name of Willd.

Q. At the time, though, you signed the deed, whom did you think you were deeding the land to?

A. I thought I was deeding it to Horace McKinley.

Q. Yes, of course you did, pursuant to the arrangement you made up there in Brownsville before you ever started out—you thought you were carrying out the original arrangement there with Horace? [361—193]

(Testimony of Henry Blakely.)

A. Well, I supposed Horace was the man. I knew he had been dealing in timber up there, and I supposed he was still dealing in it.

Q. You thought he was getting the land?

A. Yes, sir.

Q. Did your son Hugh Blakely, execute his deed right there on the day, in Roseburg, that he got through proving up? A. I think so.

Q. You were married at the time, and your wife was not down there, was she? A. No, sir.

Q. So it was necessary to come up there—

A. To Brownsville.

Q. To Brownsville to get her to sign the deed? As a matter of fact, you signed the note and mortgage down there at Roseburg, didn't you, and the deed, too? A. The deed?

Q. What?

A. No, I don't think I signed the deed down there.

Q. Well, you did sign the note and mortgage for \$600.00? A. I expect so. [362—194]

Q. Was Dan Tarpley there when you signed the mortgage?

A. Not that I know of. He might have been. I would not say about that.

Q. Was a man by the name of Crawford there?

A. Not that I know of.

Q. Now, do you recall going into a little room outside of the Land Office there right away after you had made proof? A. Outside of the Land Office?

Q. Yes. A. No, sir.

Q. Right in the same building, I mean.

(Testimony of Henry Blakely.)

A. No, sir.

Q. You don't remember that?

A. No, sir.

Mr. McCOURT.—In connection with this witness' testimony I will offer the usual deed and mortgage.

Mortgage is marked "U. S. Exhibit 67."

Deed is marked "U. S. Exhibit 68."

Cross-examination.

(Questions by Mr. BANKS.)

How long did you say that you have lived down at Brownsville, Mr. Blakely?

A. Fifty years, off and on.

Q. You are one of the old settlers down there, aren't you?

A. Yes, sir.

Q. And had you, prior to the time that you had this conversation with McKinley, had you discussed with your neighbors there the possibility of taking a timber claim?

Mr. McCOURT.—I object to that as immaterial.

A. Well, we had talked it over amongst ourselves, us boys.

Q. That was prior to the time that McKinley telephoned to you? [363—195]

A. Yes, sir.

Q. Now, you never saw McKinley from the time you had this telephone conversation, prior to the time you went up to look at the land, until you met him on the train when you went down to make your filings, did you?

A. Not that I remember of.

Q. In this telephone conversation that you had

(Testimony of Henry Blakely.)

with McKinley, did you agree to sell to McKinley that claim that you were to take up for \$75.00, that or any other sum?

A. He told me this. He says, "If you don't sell me this claim," he says, "you can sell it to anybody that will give you the most for it, but," he says, "you have got to pay me the location fee if you let anybody else have it."

Q. And he told you over the 'phone that if you sold it to him there would be \$75.00 in it, but if you didn't sell it to him that you would be required to pay him \$75.00 location fee? A. Yes, sir.

Q. And that was the conversation that you had over the telephone? A. Yes, sir.

Q. And you never saw him any more until after you went down on the train to make your filings, did you?

A. I think not. Not that I remember of.

Q. Now, prior—

A. Say, wait a minute here. He was to meet us, he 'phoned to us he would meet us at Wiley's and locate us, but he never come there.

Q. He didn't come there? [364—196]

A. No, sir, Tarpley came there.

Q. Now, you discussed the matter of coming up to these claims with these other gentlemen you have spoken about, before you went, did you?

A. Yes, sir.

Q. And you took your own team and went up to inspect the land. Now, did you have any conversation with these other gentlemen from Brownsville

(Testimony of Henry Blakely.)

that went up to take up these claims, or to visit these claims, before making the filing, with reference to the advisability of taking these claims in a bunch, in order that they might be disposed of more profitably later on, after you had made final proof? Did you discuss that with these other gentlemen from Brownsville? A. Yes, sir.

Q. And you did that prior to the time you made your filing? A. Yes, sir.

Q. And you did that after you made your filing and before final proof, did you not?

A. Well, I don't remember about that.

Q. But you had discussed it at various times, the advisability of holding these claims in a bunch, in order to realize more out of them? A. Yes, sir.

Q. Now, what is the fact as to whether or not, about the time of final proof, or at any other time—you can state the time, if you know—that some of the same neighbors of yours that went from Brownsville decided to sell their claims and realize the \$75.00 from them?

A. Well, as far as I know, I don't. I never talked to [365—197] them anything about it until we got out there.

Q. What do you mean?

A. After we had proved up.

Q. After you had proved up? A. Yes, sir.

Q. What did you find to be the case with reference to that matter, after you had proved up, Mr. Blakely? Did some of them want to dispose of their claims right away, some of the—

A. Yes, sir.

(Testimony of Henry Blakely.)

Q. Yes, and was that one of the inducements that made you dispose of your claim so soon after you proved up?

A. Well, Mr. Harrison and I, he and I talked it over, and I went to see Mealey, Judd Mealey.

Q. That was after you proved up?

A. Yes, sir. Well, I went to see Judd about what he thought about it, whether I could make any more than that out of it, whether he would give me any more or not.

Q. After you proved up you went to see Judd Mealey, and see if you could sell it to him to better advantage than you had a standing offer from McKinley? A. Yes, sir.

Q. What did Judd Mealey say about that?

A. He said he wasn't in shape to buy this.

Q. Not in shape to buy this?

A. Yes. He also advised me that if the rest of the boys sold, let mine go. Said, "I would not have one claim in there all by itself."

Q. If the rest of the boys sold, what is that?

A. He says, "If the rest want to sell I advise you to let yours go." [366—198]

Q. And that was what influenced you in selling your claim so soon after final proof, because some of the same people who held these claims in a bunch had already disposed of their claims?

A. Of course *I taken* that claim up to make what I could out of it.

Q. And if anyone else had given you more than McKinley would have given you you would have sold to them, wouldn't you? A. Yes, sir.

(Testimony of Henry Blakely.)

Q. And you have felt at all times you had the right to do that? A. Yes, sir.

Redirect Examination.

Q. Isn't it a fact that you went to see Judd Mealey because somebody told you they didn't believe you was ever on your claim at all—that is what you wanted to see him about?

A. I had understood that.

Q. That is what you were inquiring about, wasn't it? A. Yes.

Q. And he told you he didn't believe you had been on it? A. Well, I don't know.

Q. That is, if you had come out as soon as you said you *dud* he didn't think you had been on it? Isn't that so?

A. I began to get a little dubious maybe I hadn't saw the claim.

Q. You had already given a mortgage, hadn't you? A. Yes, sir.

Q. And already got the money you expected out of it, the \$75.00? A. Not when I seen him.

[367—199]

Q. Had not? A. No, sir.

Q. Did you ask for any more money when you signed the deed?

A. No, sir, never asked any more.

Q. How is that? A. Never asked any more.

Q. You talked to Judd Mealey about it about the time you made proof, didn't you?

A. Right after I proved up.

Q. Where? A. Out at Roseburg.

Q. Out there at Roseburg? A. Yes, sir.

(Testimony of Henry Blakely.)

Q. Then you rushed over and signed a mortgage to McKinley?

A. I don't know whether I signed it that day or in Brownsville, that morning, or the next day.

Q. Well, the mortgage appears to have been witnessed before A. M. Crawford, of Roseburg.

A. I would not say.

Q. You never saw him at Brownsville—Mr. Crawford?

A. Never saw him there that I know of, either.

Q. Don't know who he was? A. No, sir.

Q. Now, then, after you had mortgaged that, you didn't think you had gotten out of it all you were going to? Did you think you were going to get more money for it, after you got the \$75.00?

A. No, sir.

Q. What did you give a mortgage for, then?

A. Why did we give a mortgage?

Q. Yes. [368—200]

A. Why, we gave a mortgage, I suppose, to cover the \$400.00 of fees.

Q. Why, you thought the \$75.00 was for the land, didn't you? A. No, sir.

Q. What did you think it was for?

A. The \$75.00?

Q. Yes. What were you getting that \$75.00 for?

A. We—that was the understanding I had, that we—we was to have \$75.00—we was to give him \$75.00 if he didn't get it after locating, and if he did get it I was to get \$75.00.

Q. But he did get it? A. Yes, sir.

Q. And you got the \$75.00? A. Yes, sir.

(Testimony of Henry Blakely.)

Q. Yes, but what did you give him the mortgage for? Why didn't you give him a deed?

A. I can't tell you that. We done some funny things up there.

Q. Yes? A. Yes, sir.

Q. You bet you did, and you gave a deed two or three days later and didn't get any money, did you?

A. No, sir.

Q. Do you remember a man named Stratford calling on you up to Brownsville about a year later?

Mr. BANKS.—I don't think that is proper redirect examination.

Mr. McCOURT.—I will ask the privilege of asking it on direct. I meant to ask it before and forgot.

A. Ask the question again, please.

Q. I say, do you remember a man by the name of Stratford, [369—201] a Special Agent, coming up and taking an affidavit from you?

A. I gave an affidavit up there, but I don't remember the man's name.

Q. Was McKinley there?

A. Not that I know.

Q. Was Kribs there?

A. Not that I remember of. I didn't know Mr. Kribs at the time. If he was there I didn't know him.

Q. Who told you to go to see Stratford?

A. I don't remember that.

Q. Do you remember I called your attention to that affidavit the other day? How did you happen to make the statements contained in it there, if you

(Testimony of Henry Blakely.)

didn't see McKinley or Kribs, or some of those fellows?

A. I can't tell you. McKinley might have been there. I would not say. I could not say who was there, but I didn't know—Mr. Kribs I didn't know at that time.

Q. Where did you meet Stratford there in Brownsville, on that occasion?

A. Well, I met the man *that taken* them affidavits at the Brownsville hotel.

Q. Who all went there?

A. The whole seven of us, I think.

Q. The seven men that you have named there, mentioned a while ago?

A. Yes, sir—yes, sir.

Q. I call your attention to affidavit of claimant, contained in Government's Exhibit 10, and ask you if you signed that, or if that is your signature.

[370—202]

A. Yes, I think so.

Q. Did the Special Agent himself take the statements down that you gave him, upon the typewriter, while you were there?

A. I think there was a lady there.

Q. A lady? A. Yes, sir, I think so.

Q. I call your attention to this affidavit, the question there: "Who, if anyone, located you, or showed you this land, prior to you filing on it? A. Dan Tarpley." And the following question, "How much, if anything, did you pay him for his service? A. Fifty dollars," and ask you whether or not you were asked those questions and answered them as

(Testimony of Henry Blakely.)

they appear there? A. No, sir.

Q. You didn't answer that? A. Not that.

Q. You didn't answer that? A. No, sir.

Q. Do you remember that question being asked you at all? A. No, sir.

Q. What? A. No, sir.

Q. Was McKinley there that day?

A. Well, just as I say, he might have been, but I don't recall it to mind that he were. He might have been.

Q. Do you know the lady that was doing the stenographic work? A. No, sir.

Q. Another question: "From what source did you obtain the money with which you paid the Government for this land and the expenses incident to the entry? A. I mortgaged [371—203] the land to F. A. Kribs." Did you give that answer.

A. Well, probably I did, but I would not say.

Q. Did you know at that time that you had mortgaged the land to Kribs? A. No.

Q. How could you answer that, then, if you didn't know?

A. That is it. I knew I gave a mortgage or deed, but who to I would not—

Q. Another question: "What disposition, if any, have you made of the land or the timber thereon since you obtained the title thereto? A. I sold the land to John A. Willd." Did you answer that question in that way?

A. I probably did. I would not say.

Q. Did you know at that time that you had deeded the land to John A. Willd?

(Testimony of Henry Blakely.)

A. Well, I thought I did, yes.

Q. What?

A. I thought the deed was kind of made to him. I wasn't sure.

Q. You told me a while ago that it was made to McKinley?

A. I thought, all the time, was made to McKinley, until afterwards.

Q. "How much did you get for it? A. About \$800.00." Did you get anything like \$800.00 for it?

A. I don't think we got anyway near \$800.00, no.

Q. It was \$75.00 you got above the purchase paid to the Government?

A. Well, I suppose in that it included the \$2.50 per acres and the expenses. I have an idea that is the way it was being put down there.

Q. Yes. And did you answer any such—give any such [372—204] answer to the question before a Special Agent, and if so why did you do it, and how did you come to do it?

A. I know there was one question in there I never answered that way.

Q. What is that?

A. Well, that first you asked me.

Mr. BANKS.—About Tarpley?

Mr. McCOURT.—Dan Tarpley, yes.

A. I know that wasn't true. I never was asked that.

Q. "What caused you to sell the land at the time you did? A. I mortgaged the land and thought I would have the money. I didn't have it without borrowing it." Did you answer that way?

(Testimony of Henry Blakely.)

A. Yes, sir, that is true.

Q. Was that correct? A. Yes, sir.

Q. Did you ever intend to put a cent of money of your own in it? A. Yes, sir.

Q. When?

A. When I filed on it, when I located on it.

Q. When you located on it? A. Yes, sir.

Q. Didn't you a moment ago say McKinley told you he would furnish the money and expenses?

A. He said if I didn't have it he would furnish it.

A. You knew you didn't have it?

A. I knew I could get it.

Q. Of course, you could always get the money?

A. Yes, sir.

Q. Did you ever try to get the money?

A. No, sir.

Q. You owned over three hundred acres yourself at that time? [373—205] A. Yes, sir.

Q. And you had a bank account?

A. I don't know about that.

Q. It never occurred to you to take a timber claim upon your own responsibility and put up your own money, did it?

A. Well, I wanted to make some money out of the claim. I was born and raised there. I never used my right. A lot of fellows were coming in and taking up all the time, and I would get in first opportunity.

Q. Yes, that is all right, I don't blame you for that. "Q. Did you borrow the money directly from Mr. Kribs personally, or did some one act as his agent

(Testimony of Henry Blakely.)

or your agent in securing the land? A. I got it from Mr. Kribs." Did you answer that question that way? A. No, sir.

Q. Did you answer that question that way up here?

A. No, sir, I don't think I would, because it is not true.

Q. You didn't know Kribs? A. No, sir.

Q. Really hadn't heard of Kribs at the time, hardly? A. No, sir.

"Q. Did you make the sale to Mr. Willd personally, or did someone act as his agent in purchasing the land and paying you for it, and if so, who? A. Mr. S. A. D. Puter." Did you answer that question that way? A. No, sir.

Q. What is that? A. No, sir.

Q. How do you know you didn't?

A. I know I didn't because I didn't know Puter and know [374—206] I would not have answered it that way.

Q. Who do you suppose was answering those questions? A. Well, I don't know.

Q. "Q. When and where did you first meet Mr. Kribs previous to borrowing the money from him to pay for the land? A. I met Mr. Kribs at Halsey." Had you ever met Mr. Kribs at Halsey, and were you asked that question and answer it in that way?

A. No, sir, I never met Mr. Kribs in Halsey.

Q. Did you answer that question that way to that agent up there in that hotel?

A. No, sir, I don't think so. I know I didn't because it is not true.

(Testimony of Henry Blakely.)

Q. Now, then, you have lived in Oregon for fifty years. In fact, you were born here, weren't you?

A. Yes, sir, I was born here.

Q. And isn't it a fact that someone saw you just before you and these other fellows went up to Stratford to make this affidavit and told you to answer these questions in the way that you did answer them, and that you, pursuant to that instruction, did answer them as they appear there?

A. Not that I remember of.

Q. Do you mean to tell the Court now that you went up there intending to answer the questions truthfully and did answer them truthfully, as you recall it?

A. Yes, I aim to tell the Court that.

Q. Didn't you tell me in my office, Mr. Blakely, Saturday last, myself, Mr. Rabb and Mr. Good being present, without any request from me, that the answers you had given to [375—207] the questions before that Special Agent up there had worried you a great deal since that time?

Mr. BANKS.—I object, unless counsel intends to impeach. If that is his intention I want to know it now, otherwise we will object.

COURT.—I think he has a right to ask the questions, whether he intends to impeach or not. I don't know that the Court has authority to compel him to show the purpose of the examination, so long as it is a competent question. He has a right to refresh his memory.

Mr. McCOURT.—I don't think I have a right to show his reputation for truth and veracity, because I would concede that it is pretty good, but I want to

(Testimony of Henry Blakely.)

show he made contrary statements, unsolicited.

Mr. BANKS.—That is the Government's own witness.

COURT.—If it is, he has a right to show he made statements inconsistent with his testimony. The statute gives him that right.

(Question read as follows: Didn't you tell me in my office, Mr. Blakely, Saturday last, myself, Mr. Rabb and Mr. Good being present, without any request from me, that the answers you had given to the questions before that Special Agent up there had worried you a great deal since that time?)

A. No, I think you got that mixed up a little, Mr. McCourt.

Q. What did you say about it?

A. That was in reference to the location.

Q. What?

A. That was in reference to the location, that I had reference. [376—208]

Q. What location?

A. Well, whether I was on the claim or not.

Q. That is what you was bothered about?

A. Yes, sir.

Q. That you had made a sworn statement down there, that had worried you?

A. Yes, sir.

Q. Swearing you had been on the land, when you didn't know whether you were or not?

A. Yes, sir.

Q. I see. I have another instrument here, Mr. Blakely, that I wish to call your attention to, which purports to be an affidavit made by you in December,

(Testimony of Henry Blakely.)

1904, before William J. Burns, Special Agent of the General Land Office, and ask you if you signed that?

A. Yes, sir, that is my signature.

Q. How is that?

A. That is my signature.

Q. Do you remember the occasion of that affidavit? A. Yes, sir.

Q. Will you read it please, Mr. Blakely?

A. (After reading.) Well, I think that is pretty near correct.

Q. Pretty near correct. This affidavit you have just read—I will ask you if you told Mr. Burns there, at that time, himself and yourself being present, and possibly some other persons—I will ask you, before, who else was there?

A. I don't know whether Mr. Harrison and I went in together; I don't remember. Mr. Cooley was down here, too. E. B. Cooley. [377—209]

Q. Cooley, and who was the man that was taking down the notes? A. I don't remember.

Q. Some man you didn't know?

A. Yes, sir.

Q. I will ask you—where was it?

A. It was up in Mr. Heney's office in—

Q. Upstairs?

A. —the Portland Hotel.

Q. The Portland Hotel. “About January, 1900, as I now remember it, Mr. John Harrison informed me that he had received word from Horace McKinley that he had seven timber claims and wanted to get persons to file on same, that there would be \$75.00 in it for us and all necessary expenses. I spoke to my

(Testimony of Henry Blakely.)

son Hugh Blakely and he accompanied us to the land office at Roseburg, Oregon, where we made filings. We shortly afterwards visited the land in the manner recited by Mr. Harrison in his affidavit of this date." Did you tell Mr. Burns that?

A. Well, I have an idea that I did. That wasn't so very long after the transaction happened and it would be as near correct as I could give it now.

Q. And in which you said: "After making final proof and signing these papers"—referring to the note and mortgage—"I was paid \$75.00 and expenses, amounting to about \$110.00, by Horace McKinley. A few days later Dan Tarpley called on me at my home in Brownsville and had me sign a deed for the land to John A. Willd." Do you remember telling him that? A. Yes, sir.

Q. Now, then, did you go ahead and tell Mr. Burns of any [378—210] arrangement by which Mr. McKinley was going to loan you money and you were going to pay him a location fee, and that you could sell to whomever you pleased?

A. Did I tell Mr. Burns?

Q. Yes.

A. Well, I don't remember. Don't it state it there, what I told Mr. Burns? That has been a long time ago.

Q. Well, did you state anything to Mr. Burns in addition to that matter I just mentioned?

A. Besides this?

Q. Yes.

A. Well, I could not say. He asked me a good many questions there. I suppose I stated the facts

(Testimony of Henry Blakely.)

to him—aimed to—to Mr. Burns.

Q. You read this affidavit over before you signed it?

A. Well, I suppose I did.

Q. Pronounced it correct, did you?

A. I don't believe I would be foolish enough to sign a thing that—

Q. You were in your right mind at that time, were you not?

A. I think so.

Mr. McCOURT.—I offer the affidavit, in connection with the testimony.

Mr. BANKS.—No objection.

Mr. McCOURT.—I merely want to show there is nothing in addition to what I stated.

Marked "U. S. Exhibit 69."

Q. When did you first employ an attorney, Mr. Blakely, to appear in this case?

A. Well, we was served—we was served with some papers [379—211] here—we was served with some papers a year, two years ago, three, something of the kind, some kind of papers that we didn't understand part of it, and we went up there and saw Mr. Tootie, an attorney there in Brownsville.

Q. Who *was that* went up there?

A. Well, that is myself and the rest of the boys here that was implicated in this transaction, Harrison—

Q. Those other seven men that you spoke of?

A. Yes, sir.

Q. Your son wasn't among the party?

A. He wasn't there.

Q. He wasn't there?

A. No, sir, there was Jim Cooley, Stillwell and

(Testimony of Henry Blakely.)

Harrison and myself. Mr. Stillwell said he was acquainted with an attorney down here by the name of Mr. Banks and he came down, him and Mr. Harrison, I didn't come at all, I gave him some money to pay Mr. Banks, ten dollars, I think it was, for a fee. I had to have somebody, he claimed, to answer these complaints.

Mr. BANKS.—I don't see the materiality of this. If the Court wants to hear it I have no objection.

Q. Did some one, shortly after the suits were brought, by the name of Jamieson, or some such name, appear up there and inform yourself and the other members of your party, that the land was worth—was very valuable now, and that you were all on warranty deeds and would be liable if the Government canceled the patent, upon your warranty?

A. Well, there was a man by that name up there, yes.

Q. Did he, or some one tell you that? [380—212]

A. I met him down at Mr. Cooley's one night. He came there. Mr. Cooley wanted me to come up and we had a little talk there.

Q. Was this before you hired this attorney, Mr. Tootzie, or Banks? A. Yes, sir

Q. I will ask you now if he didn't tell you at that time that you would be liable on your warranty deed, as I have indicated.

Mr. BANKS.—Now, if the Court please, that is not fair.

COURT.—What do you claim for that testimony?

Mr. McCOURT.—I claim this fact, that it will show the interest and motive of the party in giving

(Testimony of Henry Blakely.)

the testimony as he is attempting to give it here.

COURT.—To affect his credibility?

Mr. McCOURT.—Yes.

COURT.—Very well.

Mr. McCOURT.—That is, I want to affect his oral statements, which probably inferentially conflict with the real facts apparent in the transaction.

Mr. BANKS.—I don't see how that can possibly affect that question. He is now asking about a conversation that he had with a party that is in no way connected with the case.

Mr. McCOURT.—This party is an attorney in the case, sitting right here, advising and counseling with the defendants—has been gathering testimony ever since the case started.

Mr. BANKS.—An attorney, you say, in the case?

Mr. McCOURT.—Yes, an attorney in the case. He may not [381—213] appear of record, but he is in the case.

Mr. BANKS.—We would like to know who he is.

Mr. McCOURT.—Jamieson, sitting right back there.

COURT.—He may answer the question.

A. What is the question?

(Question read as follows: "I will ask you now if he didn't tell you at that time that you would be liable on your warranty deeds, as I have indicated?")

A. Well, I would not say about that. I know he had us worked up there a little.

Q. That was the trouble, the liability that you thought you would be to upon that warranty.

A. We begun to think they would come back on

(Testimony of Henry Blakely.)

us. We had given warranty deeds.

Mr. McCOURT.—That is all.

Mr. BANKS.—Will you allow me to cross-examine on these matters that Mr. McCourt took up?

COURT.—Yes.

Cross-examination.

Q. Now, Mr. Blakely, something was about your not knowing whether or not you were on the land. State to the Court whether or not it is not a fact that you thought you were on the land that you filed on under the Timber and Stone Act at—

A. Yes, sir.

Q. —at the time you made your filing?

A. Yes, sir.

Q. Now, with reference to the deed and mortgage that counsel has asked you about, did you read over these deeds and [382—214] mortgages at the time you signed them?

A. Well, as to that I would not say whether I did or not.

Q. Well, you were not in the habit of signing papers that you don't understand the nature of, are you?

A. No, sir, I am not.

Q. What is your best recollection as to whether or not you read these papers over at the time?

A. I should think I read them over. I should think so, but I would not say positively.

Q. That is your best recollection?

A. Yes, sir, but I would not say.

Q. Now counsel has called your attention to this affidavit that you gave before Mr. Burns. You have stated the same things here to-day that you said in

(Testimony of Henry Blakely.)

this affidavit to Mr. Burns, haven't you?

A. I aimed to.

Q. Yes. Now, did Mr. Burns ask you anything about the other matters that you didn't say anything about in the affidavit, when he took that affidavit? There are certain matters that counsel referred to as not being in the affidavit. Did Mr. Burns ask you anything about those matters?

A. Well, he went through the case pretty thoroughly, I thought.

Q. Well, he put down all of the essential facts in that affidavit that he took, didn't he?

A. Well, I suppose so, that is all I know.

Q. And if there had been anything else you told him he regarded as essential he would have put it there. Now, in this affidavit that you made before Stratford, [383—215] you told Stratford the same as you have told the Court here to-day, did you not, in response to—I will read the question and answer. "Did you have any contract or agreement, either express or implied, with Mr. Kribs, Mr. Tarp-ley, Mr. McKinley, or any other person in regard to the disposition which you should or could make of the land at any time prior to making the final proof?

A. No, sir." You said that to Mr. Stratford, did you, at that time? A. I suppose, yes.

Q. You said that here to-day. You never at any time, Mr. Blakely, intended to defraud the Government out of any land, did you? A. No, sir.

Q. You never intended to defraud the Government out of this particular entry? A. No, sir.

Q. What you did in the matter you considered

(Testimony of Henry Blakely.)

was perfectly legitimate and lawful?

A. I thought so at the time, yes, but I have thought different since.

Redirect Examination.

Q. You began to think different about the time that Stratford affidavit was taken, didn't you?

A. Yes, I began to wish I had never seen the claim.

Q. And have been wishing that ever since?

A. Yes.

Witness excused. [384—216]

[**Testimony of C. J. Reed, for the Government.**]

C. J. REED, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

You are the United States Marshal?

A. As yet.

Q. For how long? A. God knows.

Q. Do you know William J. Burns?

A. I do.

Q. Have you in your hands for service a subpoena for him as a witness in this case? A. I have.

Q. Do you know whether or not he is in the State of Oregon?

A. No, not exactly. I don't think he is in the State of Oregon.

Q. Have you made inquiry for him?

A. Yes, I had a letter *from* a week ago from Chicago. He expects to come to the coast, but he hasn't—I haven't heard of his coming.

(Testimony of C. J. Reed.)

Q. Expects to visit you immediately upon reaching— A. Oregon.

Q. —Portland? A. Yes, Portland.

No cross-examination.

Witness excused. [385—217]

[**Testimony of John Harrison, for the Government.**]

JOHN HARRISON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Brownsville.

Q. How long have you lived at Brownsville?

A. Practically all my life. 36 years—or 56 years.

Q. Were you living there in 1900?

A. Yes, sir.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Daniel W. Tarpley?

A. Just know him when I see him, is all.

Q. Do you know S. A. D. Puter?

A. A little louder, please.

Q. Do you know S. A. D. Puter?

A. Yes, sir, I thought that was who you mentioned. Tarpley, I know him pretty well. I only know Mr. Puter when I see him. But Tarpley, you mentioned him first, I guess. I am hard of hearing. I know Tarpley very well, but not Puter.

Q. Do you remember being here in Portland, Oregon, about the 29th day of December, 1904?

A. Yes, sir.

Q. And having an interview with Wm. J. Burns,

(Testimony of John Harrison.)

Special Agent of the Government at that time?

A. Yes.

Q. Where was that interview had?

A. Portland Hotel.

Q. Portland Hotel? A. Yes.

Q. Do you recall signing an affidavit there before him at that time? A. Yes, sir. [386—218]

Q. I exhibit to you an instrument purporting to be an affidavit made by you before William J. Burns, Special Agent of the General Land Office, on the 29th day of December, 1904, and ask you whether or not that is your signature appended thereto?

A. Yes.

Q. I will ask you to read the instrument and state whether or not that is the document you executed there at that time. That is the instrument you signed there at that time? A. Yes, sir.

Mr. McCOURT.—I offer the document in evidence as an admission of the defendant.

Mr. BANKS.—It is incompetent at this time, if your Honor please. If the witness testified to a state of facts that is at variance to the affidavit he signed there, then it may be competent. You put the witness on the stand and undertake to prove before you examine him, that he has made certain admissions.

COURT.—You offer it as an admission?

Mr. McCOURT.—I merely called him to identify an instrument. He is a party to the suit and appears by counsel. I don't call him for any substantive evidence at all, but to identify a document, the witness to it being out of the state.

(Testimony of John Harrison.)

Mr. UELAND.—The defendants that we represent object to this evidence as incompetent and hearsay, as evidence against them in this case, and as evidence in the case for any purpose; and to support that objection we call attention to the fact that the District Attorney has said that the entrymen are no parties in interest. The District Attorney has proceeded and proceeds in this case to cancel and annul [387—219] several patents without having the entrymen here at all, and the entrymen that are here are here only nominally and not for any real purpose. Now, with reference to the case, what use and purpose in getting an admission against the party who is really nominal and has no interest in the case?

COURT.—It is not competent as against anyone except this defendant.

Mr. McCOURT.—Unless we can bring notice to them by some other means.

COURT.—I don't understand what effect it can have in the determination of the case.

Mr. McCOURT.—I have to show the fraud at the beginning. I know the title is not in him. It is in the defendants represented by Mr. Ueland, Governor Lind and Mr. Gearin; and some others.

COURT.—I doubt whether it has any purpose in the case. Certainly not against the defendants represented by Mr. Ueland, Governor Lind and Mr. Gearin.

Mr. McCOURT.—I merely offer it against this defendant.

COURT.—You can put it in against him, as I say,

(Testimony of John Harrison.)

but I don't see what bearing it can possibly have on the case.

Mr. BANKS.—I want my objection as incompetent, irrelevant and immaterial and an attempt to prove an admission from a witness when the witness is present in the court and sworn as a witness.

Affidavit marked "U. S. Exhibit 70."

Mr. UELAND.—It is not admitted against our side.

COURT.—Against no one except this defendant, if he has any interest in the case. [388—220]

Cross-examination.

(Questions by Mr. BANKS.)

Mr. Harrison, at the time you signed this affidavit before William J. Burns, was the grand jury in session—United States grand jury?

A. I couldn't say, but I think so. But this was in his office.

Q. Had you—who suggested that you go up to see Mr. Burns about this? A. How?

Q. Did the marshal? A. Yes, sir.

Q. Suggest that you go and see Mr. Burns?

A. Yes, sir.

Q. And make a statement?

A. Yes, sir, he asked me to do it—if I would and I—

Q. Yes, and he accompanied you to the presence of Mr. Burns, did he?

A. He told me he would meet me at the train and go with me if I would go. He asked me if I would.

COURT.—Who told you? A. The marshal.

(Testimony of John Harrison.)

COURT.—What marshal? What was his name?

A. I can't recall his name now.

COURT.—The man on the stand a while ago?

A. I don't think so.

Q. One of his deputies?

A. One of his deputies that subpoenaed me.

Q. Did he meet you at the train?

A. No, he was away at the time, but the next morning I went myself, but he had asked me to go and I told him I would.

Q. Was the statements made in this affidavit, Mr. Harrison, made under circumstances from which it would appear that an [339—221] indictment might be returned against you by reason of your having taken this claim and what you did incident to it?

A. There was such talk, yes.

Q. How?

A. There was talk of that kind, yes, sir.

Q. Did Burns—

Mr. McCOURT.—Just a moment. I move to strike out the answer and object to the question and similar questions for the reason that the witness was called merely for identification here and not asked substantive matter. If the counsel wants to examine him about that, he can call him as a witness.

COURT.—He certainly would have the right to find out how he made the admission.

Q. Did Mr. Burns suggest to you anything about the possibility of your being indicted for what you did in connection with the taking of this timber claim?

(Testimony of John Harrison.)

A. Made it in this way, that we could be, every one of us, indicted.

Q. Yes? A. Yes, sir.

Mr. McCOURT.—I didn't catch that answer.

COURT.—Could be.

A. Could be, every one.

Mr. BANKS.—He said, "Could be every one of us indicted."

Q. Did he suggest that to you before he dictated this affidavit which you signed?

A. Yes, sir, that was talked before.

Q. Yes?

A. Yes, there was quite a talk betwixt us there.

[390—222]

Redirect Examination.

Q. Did you make the statements contained in the affidavit because of that statement to you?

A. Did I do what?

Q. Did you make those statements in that affidavit because of the information Mr. Burns imparted to you?

A. No, not exactly, but partly, and I had been kept there for a long time away from home, and was anxious to get away, and that as far—practically, is about right. I just, in running through it—the talk in it—I got acquainted with Mr. Kribs at that time at Roseburg—I didn't; it was later.

Q. You attempted or intended to tell Mr. Burns the truth there when you made the statement?

COURT.—If you want to know what he told Mr. Burns, ask him about it. You have introduced the

(Testimony of John Harrison.)

affidavit as an admission.

Mr. McCOURT.—I will withdraw the question.

Recross-examination.

Q. Do you remember, Mr. Harrison, whether or not you read over the affidavit before you signed it?

A. I don't think I read it myself at all. No, sir.

Q. Who requested you to sign it?

A. Well, I couldn't say just now which one, but there was Mr. Heney, Mr. Burns and another gentleman was in there. There were three, but I couldn't say which one.

Redirect Examination.

Q. Was the other gentleman the man who was doing the writing? A. Sir?

Q. Was the other gentleman the man who was doing the writing? A. Yes, sir. [391—223]

Q. He was the stenographer? A. Sir?

Q. The stenographer, the man who did the type-writing?

A. Yes, sir, I think so. He was in there.

Mr. McCOURT.—I may wish to recall this witness, if the Court please.

Witness excused. [392—224]

[**Testimony of Fred C. Rabb, for the Government.**]

FRED C. RABB, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live?

A. My headquarters are in Portland, Oregon.

(Testimony of Fred C. Rabb.)

Q. What is your business?

A. Special Agent of the General Land Office.

Q. And how long have you been engaged in that capacity? A. Well, since June of 1908.

Q. Did you ever meet the defendant in this case, Frank W. Burford? A. Yes, sir.

Q. Where? A. Cheuelah, Washington.

Q. When.

A. Well, I don't believe that I can give the exact date, but it was in the fall, I think, either the fall or winter of 1909.

Q. Did you at that time have any talk with Mr. Burford at that place? A. Yes, sir.

Q. About this case? A. Yes, sir.

Q. Was the substance of the conversation reduced to writing at the time? A. Yes, sir.

Q. I hand you an instrument and ask you if that is the result of the conversation? A. It is.

Q. When was that reduced to writing, as to the time that you had the conversation? [393—225]

A. Why, it was reduced to writing at the end of the conversation, and, in fact, while we were engaged in the conversation. It was the consummation of the conversation.

Q. Did you read it over to Mr. Burford when you had completed it? A. Yes, sir.

Q. And did he sign it in your presence?

A. Yes, he read it over and signed it.

Q. Well, could he read your writing there?

A. Well, I explained what he could not read.

Mr. McCOURT.—That instrument, if the Court

(Testimony of Fred C. Rabb.)

please, is offered for the same purpose and for the same reasons as given in the Harrison entry.

Mr. LIND.—In that connection I desire to ask the District Attorney—I do not think it is in evidence yet, if it does not appear by the record you will show that the land to which this relates was conveyed by the party who signed the affidavit many years ago, and had been conveyed long before he signed the affidavit.

Mr. McCOURT.—I will—

Mr. LIND.—We make the same objections that were made by my associates to the last offer, and in addition to that it is shown now specifically by the counsel's admission that the party whose affidavit or statement was offered had no interest in the *res* before the Court. It is clearly hearsay, incompetent against him and everybody else.

Mr. McCOURT.—It is merely offered as against that defendant. [394—226]

Mr. LIND.—Now, your Honor, we should have some regard for the record. Does the District Attorney claim that a several judgment might be entered against the various defendants in this case? A money judgment against this defendant? Has he answered? Has he appeared? Has this defendant answered in this case?

Mr. McCOURT.—No money judgment can be returned against him.

COURT.—I don't think it is competent at all for any purpose in this case, because the statement was made by this party after he had parted with the title

(Testimony of Fred C. Rabb.)

and any decree that could be entered would not affect him one way or the other in this case. It is a suit to set aside a patent, with possibly a claim for damages.

Mr. McCOURT.—I offer it for identification, with an exception.

Marked “U. S. Exhibit 71 for Identification.”

Mr. BANKS.—I will suggest, if the Court please, that it might be proper to strike out the offer of the affidavit that was submitted to Harrison.

Mr. McCOURT.—There is a difference. It was connected by Harrison. The other man is in default. The Government is entitled to whatever the bill claims against him, without proof.

Witness excused. [395—227]

**[Testimony of Dan W. Tarpley, for the
Government.]**

DAN W. TARPLEY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Tarpley?

A. Salem, Oregon.

Q. How old are you? A. Forty.

Q. How long have you lived at Salem?

A. Since 1888.

Q. How is that? A. Since 1888.

Q. What business are you now engaged in?

A. In the timber business—land business.

Q. Who are you associated with in the timber land business? A. No one in particular.

(Testimony of Dan W. Tarpley.)

Q. Do you maintain an office anywhere?

A. No, sir.

Q. Where do you make your headquarters?

A. Well, in the Chamber of Commerce Building.

Q. Whose office?

A. Well, no one's in particular.

Q. What?

A. No office in particular—my brother's sometimes.

Q. Don't have any?

A. My brother's sometimes.

Q. Your brother, Louis Tarpley? A. Yes.

Q. One of the attorneys in this case. You spend quite a bit of time in the office of the defendant, F. A. Kribs, don't you? A. No, I do not.

Q. Do not? A. No, sir, not there—

Q. How long have you been engaged in the timber land business? [396—228]

A. About ten years.

Q. Continually?

A. Yes, continuously since that time.

Q. Were you engaged in that business in the latter part of 1904 and during 1905?

A. Yes, I think I was.

Q. Where did you have your headquarters then?

A. Well, I was in Portland most of the time—Salem part of the time.

Q. You say for the last ten years you have been in the timber business?

A. Since 19—well, about ten years—since 1899, the fall of 1899.

(Testimony of Dan W. Tarpley.)

Q. What had you been doing prior to that?

A. Practicing law.

Q. In Salem? A. Yes.

Q. Do you know Horace McKinley?

A. I do.

Q. S. A. D. Puter? A. Yes.

Q. How long had you known Horace McKinley when you first engaged in the timber land business?

A. Oh, I don't know—two or three years—possibly four.

Q. You knew him as a timber land man?

A. Yes, knew him as a timber land man.

Q. S. A. D. Puter—when did you become acquainted with him? A. About the same time.

Q. Do you remember the transaction or transactions of yourself, Horace McKinley and Puter in locating people upon a tract of land in Linn County, township 14, 2 and 3, as they are commonly known among yourselves? A. I do.

Q. When did you first enter upon that transaction? [397—229]

A. That was along in January, 1900, in Albany.

Q. In Albany? A. In Albany.

Q. Do you know Fred Kribs? A. I do.

Q. How long after that was it you became acquainted with Kribs?

A. I met Kribs in April, 1900.

Q. Where?

A. Up in Mealey's place—up east of Lebanon—Sweet Home.

Q. Near this timber?

(Testimony of Dan W. Tarpley.)

A. Close to the timber, yes.

Q. What was his purpose in going up there at that time?

A. To look over this tract of timber.

Q. The timber involved in this case?

A. In this case, yes.

Q. Together with 24 other entries that were—

A. There was 57 altogether at the time he came up there.

Q. 57 entries? A. Yes, sir.

Q. How long did he stay up there at that time?

A. I think he went out into the timber one day—stayed out in the timber one night and came back the next day. Was there about two days—two or three days on the trip going and coming; perhaps four days; I don't remember.

Q. Who was in the party?

A. Why, McKinley and Harry Barr. A fellow by the name of Brandenburg came up to Mealey's place. I was there—met them at Mealey's. The next day—I think that was the 3rd day of April—the morning of the 4th McKinley, Kribs and I went out into the timber and came back on the 5th.

Q. Where did Brandenburg go in the meantime?

A. He stayed at Mealey's or came back down.

Q. Did they go up with you and Kribs? [398—
230]

A. Not up to the timber, no.

Q. Were they introduced to Kribs there at the time?

A. I don't know. He was with Kribs when he came.

(Testimony of Dan W. Tarpley.)

Q. What?

A. They came up in the same rig. I never seen Kribs until that time.

Q. They took some timber?

A. They had already filed, yes.

Q. They were going up to look at the timber?

A. I don't know as they were going up to look at the timber there. I don't know what object they had in going up; I presume, though, that was it.

Q. You say that was the fourth day of April Kribs come there?

A. No, the 3d—the 3d day he came there.

Q. The 3d day of April? A. Yes.

Q. You knew or learned at that time that McKinley had been arrested in Albany the day before?

A. No, that is the first I knew of it.

Q. When he came there he told you?

A. Yes.

Q. Did he come all the way from Albany with the party? A. He did.

Q. How did they go on out?

A. They drove. I think they came to Lebanon or Brownsville and came by livery team from there.

Q. Now, then they went back, did you go back?

A. Yes, I think I went back with them. I am almost sure I did.

Q. Where to? A. Albany.

Q. And from Albany where did you go?

A. I don't know. Don't remember.

Q. What? A. Don't know.

(Testimony of Dan W. Tarpley.)

Q. Were you down to Roseburg about that time?
[399—231]

A. I was making very frequent trips to Roseburg at that time. I cannot recall the dates.

Q. What was the purpose of your frequent visits to Roseburg at that time?

A. Well, we were filing people on timber land.

Q. This same land?

A. Yes, and taking them back the second time to make final proof.

Q. You hadn't made any final proof up to that time?

A. No, I say I was making frequent trips. I don't think there was ever any had before that. They was made after that. They were made in May—the final proofs—most of them.

Q. Were you in Roseburg following Kribs' visit out there to the lands with McKinley, when the proofs were commenced and the contests were had—the hearings? A. I was, yes.

Q. How many days did those contests consume there?

A. Well, they didn't last very long. I think that they had two witnesses on the stand. Bas Wagner was on, I think, for almost one day. Only a day or two, and then they called the suit off and adjourned—went to Tacoma to compromise the matter with the Northern Pacific. They only lasted a day or two—couple of days perhaps.

Q. Who went to Tacoma to compromise the matter?

A. I think Puter. Puter—I don't know whether

(Testimony of Dan W. Tarpley.)

McKinley went or not—and Pierce Mays and their attorney from St. Paul, and Moulton, the Northern Pacific man.

Q. What occurred now—how long was Puter gone to—

A. I don't know just how many days he was gone.

Q. What occurred when he came back?

A. Well, there were 24 entrymen relinquished.

Q. Who secured those relinquishments? [400—
232]

A. I secured part of them.

Q. Who secured the balance?

A. Well, I don't know; I presume Puter and McKinley did.

Q. Did you have to pay them anything to get their relinquishments?

A. Yes, I paid some of them. Some of them would not sign a relinquishment at all.

Q. Well, they all signed relinquishments but three, didn't they?

A. Well, I—

Q. George Meyers and wife and sister in law—

A. Three, I know that did not. There might have been more; but I know positively three refused to sign the relinquishments.

Q. Those that did sign, were they paid anything?

A. Yes.

Q. What was the price paid?

A. Well, I don't know; I suppose \$15 or \$25. I know I went over to Dallas and got one.

Q. Whose was that?

A. Charlie Barr's. Charlie Barr is a brother of Harry Barr. Not the Charlie Barr that is here and subpoenaed in this case.

(Testimony of Dan W. Tarpley.)

Q. Another Barr?

A. Another Barr, yes.

Q. Charles I. Barr that was?

A. Well, I don't know his initial. It was Charlie Barr—a young fellow.

Q. What was his business?

A. At the present time he is City Surveyor here—working in the City Surveyor's office.

Q. Here in Portland? A. Yes.

Q. Who assisted you in securing these relinquishments? [401—233]

A. Well, I had no one; the ones I got I had no assistance at all. But I got some of the relinquishments and I think Puter and McKinley got the rest—the only ones that I know.

Q. Where was Kribs during the time you had the hearing down at Roseburg?

A. I am not positive whether he was there or not. I think that he was. I would not say that he was there at the time.

Q. Do you recall that he was there when the proofs were made?

A. Yes, he was there when the proofs were made.

Q. Well, that really was a part of making the proofs, was it not?

A. When the contest was made?

Q. Yes, the proofs following immediately afterwards.

A. I don't know as to that. I don't know whether a day or a week or three weeks afterward.

Q. Or did the proofs follow the relinquishments?

A. Well, I don't know as to that.

(Testimony of Dan W. Tarpley.)

Q. What did the Northern Pacific do when you got the relinquishments?

A. I think the proofs followed the relinquishments. What did they do, did you say?

Q. What did the Northern Pacific do as soon as you got the relinquishments?

A. Well, they scripped 24 claims.

Q. What did they do with the other 33?

A. They withdrew their contest.

Q. I see. What was done with those relinquishments which you procured?

A. I don't know.

Q. Do you know who they were given to?

A. No, I turned—the ones I got, I turned them in to [402—234] McKinley and Puter. I don't know what they done with them.

Q. Well, during this time were there any entrymen there waiting to make proof at Roseburg?

A. During what time?

Q. During the time that you were having those hearings down there, and pending the time of your settlement with the Northern Pacific?

A. Well, there was entrymen there, yes. There was Wagner.

Q. What?

A. The entrymen was there—some of them. I don't know how many was there.

Q. What is your recollection as to a few or quite a number?

A. Well, I don't remember. I know we discussed the proposition; said that there was 57 claims when they came up—as to how long this contest would last

(Testimony of Dan W. Tarpley.)

—for the 57 claims and two witnesses to each claim— if they took a day for Wagner it would take quite a while to try the 57 contests. I presume most of them were there. I don't remember now.

Q. Now, had you accompanied any parties to Roseburg that were there to file, prior to that?

A. Yes.

Q. During the filing?

A. I accompanied a number of entrymen when they made their filings, and also when they made their final proof.

Q. What is the largest crowd that you remember chaperoning? A. Seventeen.

Q. Had you accompanied them both at filing and at proof? A. No, this was at proof.

Q. Oh, that was at proof? A. Yes.

Q. What were your functions there as the director or superintendent of the party?

A. Why, I took them up on the land and brought them out [403—235] to Roseburg.

Q. What did you have to do in that connection?

A. After they got to Roseburg?

Q. Yes, and the entire—the matter of their expenses and their entertainment, etc.?

A. Well, I paid—the parties I took in I paid the expenses—the hotel bills and railroad fare.

Q. Now, how long had you and McKinley and Puter been engaged together in the land business—in land transactions, before you got into this one?

A. This is the first timber deal that I was ever in with Puter, and also with McKinley, except with the claim that I took myself—the first transaction.

(Testimony of Dan W. Tarpley.)

Q. That would be sometime before that—six months or eight months?

A. Yes, something like that; four or five or six months.

Q. Did you—you spoke of this arrangement being effected at Albany. Just tell us what that was there—the arrangement at Albany.

Mr. LIND.—What arrangement?

Mr. McCOURT.—He spoke of entering into this transaction at Albany.

Mr. LIND.—With whom?

Mr. McCOURT.—With Puter and McKinley.

A. McKinley and I went from Brownsville to Albany in December of 1899 and registered at the Revere House at Albany and the papers came out and stated that H. G. McKinley, a timber man from LaCrosse—it came out in the Albany papers—was registered at the Revere House. Mr. William Mealey saw it in the paper and came down and told him that the Northern Pacific had cruisers in Township 14 south, 2 and 3 East, [404—236] cruising this timber out for the purpose of laying scrip upon it.

Q. Were you present at the conversation?

A. I was present at the conversation. And that they had a set of cruisers up there and that he knew the townships—that he has assisted in surveying—helped survey the townships and it was good timber. So McKinley came to Portland to talk it over. Came to Portland to see Puter, and they came back to Albany. That was in January. I don't remember the date; I think in January, or the latter part of De-

(Testimony of Dan W. Tarpley.)

ember; along about the first of the year—along the latter part of December. And met Mr. Mealey. Puter arrived at the Revere House and I wrote out a contract. It was along about two o'clock in the morning when I got the contract finished, whereby they were to pay Mr. Mealey \$10 a claim or \$40 a section for—

Mr. UELAND.—Wait a minute.

A. All right.

Mr. UELAND.—Well, we don't object.

A. We was to pay him so much—\$10. I think the consideration was \$10 a claim or \$40 a section. To just merely show him—tell him where the timber was that would cut so many thousand to the acre.

Q. What was that minimum?

A. Well, I don't remember now what it was.

Q. Then what was done?

A. Well, McKinley made a preliminary run up through these townships to look through and see the timber through there.

Q. Did you go with him?

A. No, I went as far as Mealey's, but did not go into the timber. He went into the timber. I did not go with him into the timber. [405—237]

Q. All right.

A. And then after he came back and reported that the timber was all right, we located these people on the land.

Q. How many of them?

A. Well, there was—I don't remember the first. I think at first there was about 30—32 or 30—something like that at first. At the time he was arrested,

(Testimony of Dan W. Tarpley.)

seems to me, part of them afterwards—after the time he was arrested. I am not positive about that. Anyway, we filed 57 all together.

Q. Who did the filing?

A. Who did the filing?

Q. Yes. A. The entrymen, I suppose.

Q. I understand, but who was it placed the entrymen? Who got the entrymen to do the filing?

A. Well, I got some of them and McKinley some, I think.

Q. You and McKinley did that part of the work?

A. Yes, with the exception of about three or four Puter got, excluding himself and wife and Mrs. Jacobs. I think McKinley and I got all but four—four or five.

Q. How long a period did that filing extend over?

A. Well, I don't—

Mr. UELAND.—That is a matter of record.

Mr. McCOURT.—Yes, the record shows that. Over about two months, didn't it?

A. You mean from the time of the first filing to making final proof?

Q. No, until they made the last filing.

A. It may have been. I did not think it was that long. I don't remember the time.

Q. It was about five or six weeks, I think. I think February 26th was the last filing.

COURT.—They were all made in January and February. [406—238]

Mr. McCOURT.—From January 19th to February 26th.

A. Oh, four or five weeks.

(Testimony of Dan W. Tarpley.)

Q. What became of Mr. Puter in the meantime?

A. Well, I don't know. I don't know. Puter made a trip East. I don't know whether it was during this time or not. He made a trip east after the first filings was made—after we put the first filings on, I know he made a trip east. I don't remember the month. In securing the entrymen he left most of that to McKinley and I.

Whereupon proceedings herein adjourned until April 21, 1910, at 10 o'clock A. M. [407—239]

Portland, Oregon, April 21, 1910, 10 A. M.

DAN W. TARPLEY resumes the stand.

Direct Examination (Continued).

(Questions by Mr. McCOURT.)

Were you present at the entire negotiations that were—or rather the formulation of the plan between McKinley and Puter and yourself at the time Mealey visited Albany in February—January?

A. Yes, I think I was.

Q. You were? Do you recall whether those lands are in a body upon which you later filed persons?

A. No, I think not; the townships are in the railroad grant, and that would be all the even sections; the railroad or the Oregon and California had the odd sections.

Q. Was it the purpose to have them as nearly contiguous as possible?

A. I think so. That is usually the case; to select your lands—get them as near in a body as you possibly can and take the good timber.

Q. What were you going to do with the land?

A. Well, I don't know.

(Testimony of Dan W. Tarpley.)

Q. What?

A. I don't know what they were going to do with it.

Q. Well, you was there?

A. Why, at the time the Mealey's—

Q. Yes.

A. Going to locate it or file; locate people on it.

Q. What were you going to do with it when you got it?

A. I don't know. I had nothing to do with the arrangement between Mealey—I had nothing to do with them at all at that time further than writing out the contract. [408—240]

Q. Now, how soon after that did you procure or get locators? A. Immediately afterwards.

Q. Well, where did you go to get locators?

A. Well, some in Albany; some in Salem; some in Roseburg; some from Brownsville. I think the first were from Albany and Salem.

Q. Any from Roseburg?

A. Yes, I think there were. They were filed later than the Albany and Salem people.

Q. How is that?

A. I think they were filed later than the Roseburg—or the Albany fellows. I am not positive, but I think so.

Q. Now, then, did you secure Frank Starr of Salem?

A. I think I talked to Frank Starr. I don't know whether I was the first one. I can't segregate the ones that I saw first from the rest. I know quite a number I saw alone.

(Testimony of Dan W. Tarpley.)

Q. Where did you meet Frank Starr?

A. I don't remember. It was in Salem.

Q. Where did you usually meet him when you wanted to see him?

A. Sometimes on the street; sometimes I met him in the bar.

Q. In where?

A. I think he worked—did at one time, anyway, as a bartender in Salem.

Q. Whose saloon?

A. At that time I don't know as he was working at all. I think he worked for—I am not positive—Mel Hamilton—Bill Anderson. That was his profession, anyway.

Q. Clarence Lewwill, who was he?

A. I don't remember him.

Q. Who secured H. C. Barr, the fellow at Albany?

A. I think I secured Barr—Harry Barr and his brother. [409—241]

Q. What was his brother's name?

A. Charlie.

Q. Where was he living then? A. Albany.

Q. What was Harry doing?

A. Well, I don't know what he was doing at that time. He was a surveyor.

Q. He was a surveyor?

A. Yes—profession.

Q. Afterwards?

A. No, at that time. His father was a surveyor and his son had been doing some surveying work.

Q. What was Charlie Barr doing?

(Testimony of Dan W. Tarpley.)

A. I don't—he was—shortly after that, anyway, was working in a woolen mill at Dallas. I don't know at the time. He was working at the woolen-mill at Dallas at the time I got his relinquishment.

Q. Charles Brockett?

A. He was a waiter at the Willamette Hotel.

Q. Did you secure him?

A. No, I think McKinley did. I think McKinley secured him. I may have talked with him, however.

Q. Brandeberry?

A. He lives at Albany.

Q. What was he doing in Albany?

A. I don't know.

Q. Did you secure him?

A. I don't think I did.

Q. Charles Farrell?

A. He was from Albany.

Q. What was his business?

A. I don't know what his profession was.

Q. Was he any relation to Newt Farrell? [410—
242]

A. No.

Q. Hohn L. Green—what was he doing?

A. I think he was working at the woolen-mills in Salem.

Q. Did you secure him?

A. I made a trip—went out to his house, the best I can remember, and had a talk with him. I don't remember whether it was before he filed or after he filed.

Q. Jay S. Phillips—did you induce him to file?

A. No.

(Testimony of Dan W. Tarpley.)

Q. What was his business?

A. I don't know what he was doing then. He worked at the Willamette Hotel afterwards. I don't know whether he was working there then or not; and he was also in the saloon business in Salem.

Q. In what? A. Saloon business.

Q. Sell Finley?

A. Sell Finley? I think he lived out in the country there some place from Salem.

Q. Ed Finley—did you secure him yourself?

A. No.

Q. That was McKinley?

A. McKinley secured him.

Q. Now, after you would have a talk with one of these fellows about filing, what did you do?

A. Took him to the Land Office at Roseburg.

Q. What did you do—who paid their expenses?

A. The time that we took Frank Starr and Brochett and most of the fellows you just named there, why, McKinley paid the expenses.

Q. Was he along with that party as they went?

A. I met him at Albany—I got on the train at Albany. He got on the train with Jay Phillips and a number of the boys [411—243] from Salem. I got on at Albany and we went to Roseburg.

Q. How many parties did you take to Roseburg yourself, to file?

A. I never took any alone.

Q. McKinley was always along?

A. McKinley was always along. I took a party alone one time to make final proof.

Q. Yes. I will get to that later. Well, what did

(Testimony of Dan W. Tarpley.)

you do after you would go up to Albany there—you and McKinley take a party to file—then what would you do? A. You mean Roseburg?

Q. Roseburg, I mean.

A. Well, have them make the entry on the land—took them to the Land Office and brought them back.

Q. Paying their expenses both ways?

A. That was the agreement—to pay the expenses.

Q. With them. You paid the hotel bills?

A. Yes.

Q. How much were you to pay them in addition to their expenses? A. \$75. \$75 to \$100.

Q. When was that \$75 to be paid?

A. At the time of final proof.

Q. Now then, when it came time to make final proof, how did the entrymen become apprised of the fact that it would be time?

A. Well, I suppose they received notice.

Q. From whom?

A. Well, the customary way, I suppose, is from the paper that the notice was published in. However, they may have been notified by McKinley or Puter. [412—244]

Q. Do you remember notifying a number yourself? A. I don't know as I did.

Q. How did you find a bunch ready to go—for instance, when you took the seventeen?

A. We knew at the time the date was set to make final proof.

Q. Did they all meet together or how did you pick them up?

(Testimony of Dan W. Tarpley.)

A. I suppose went and got them.

Q. You are sure it was 17, or 16 you took down there at one time—no, that was filing.

A. That was filing.

Q. Yes, I see. Well, what was the operation that you went through when you got them gathered up?

A. Well, took them back to Roseburg and had them make final proof.

Q. How did you provide for their transportation?

A. Well, McKinley attended to that.

Q. You knew how it was being done?

A. I understood he made rates—had rates some way or other.

Q. Made rates with the Southern Pacific Company?

A. I don't know what way.

Q. How?

A. I don't know what way. I know we got rates—reduced rates some way, there, by taking a number at a time—rates at that and also at the hotel.

Q. Now, when you got to Roseburg, what occurred?

A. Well, the entrymen we took to the Land Office to make final proof.

Q. Did you have them meet you some place else before you come to the Land Office?

A. Not that I know of. After they got to Roseburg, why, the duties was to make final proof—was about ended. I did [413—245] not have much to do.

Q. Well, you cautioned every one of them, or

(Testimony of Dan W. Tarpley.)

rather, you advised them of the questions they would be asked? A. I did not.

Q. Didn't you?

A. I don't remember anything about it.

Q. Didn't you, every one that you had, caution him that he would be asked questions—whether or not he had made a contract to transfer the land to anybody else, or by which anybody else was to get an interest in it?

A. I may have done that, but I don't remember of it. I may have made him acquainted with the nature of the affidavit that he had to fill out before the Land Office.

Q. That was when you first went up to file?

A. I don't know. I say I don't know that I did. I may have.

Q. You don't know? That was the customary practice you went through at that time in handling—

A. At that time had not established any custom at all. My first—

Q. Just establishing one?

A. Just establishing one? That was the first parties that ever I had taken up or was interested in, on filing of timber claims.

Q. Where did you write out those Timber and Stone Sworn Statements? When you got to Roseburg or before you got there? A. What?

Q. When did you make out those Timber and Stone Sworn Statements? When you got to Roseburg or before you went there?

A. I don't know as I wrote any of them.

(Testimony of Dan W. Tarpley.)

Q. I will call your attention to some of these and see if you did actually write them?

A. I don't know. [414—246]

Q. Well, I don't either. I call your attention to Timber and Stone Sworn Statements of Charlie Barr and ask if that is your handwriting?

A. No sir.

Q. You didn't write that? A. No, sir.

Q. H. C. Barr? A. No.

Q. Whose writing is it?

A. Well, I don't know. It isn't mine.

Q. Whose writing is that of Hugh Blakely?

A. Not mine.

Q. Do you know whose it is? A. I do not.

Q. Well, probably you didn't make these Timber and Stone Sworn Statements?

A. I am pretty sure I didn't.

Q. They were made in duplicate, were they not, at that time—or are now, for that matter?

A. I suppose so.

Q. Now, after the entryman had completed his testimony and the witnesses had given their testimony in the several cases, what—who made the payment of the money over to the Receiver?

A. I don't know.

Q. Do you recall that that was paid—usually paid—the entire bunch of people paid by one check?

A. No, I do not. I don't know anything about the money transaction part of it at all.

Q. Well, after they had completed the proof, what did you do with them?

(Testimony of Dan W. Tarpley.)

A. They went back home, I guess. I only—after they—I think that after they made final proof they went to Shupe's office and made a mortgage—most of them, or all of them I guess. [415—247]

Q. You went along, didn't you, mostly?

A. No, I don't know as I did. I was along part of the time.

Q. Made a mortgage for how much money?

A. \$600.

Q. In favor of whom? A. Fred A. Kribs.

Q. That was done in each case?

A. Pretty sure it was.

Q. Was Kribs there in Shupe's office?

A. I don't remember whether he was there or not.

Q. Was he about the Land Office there when you were making proof on those different days while you were there?

A. He was in Roseburg at that time, I think, but I don't know as he was in the Land Office. I was not in the Land Office at the time those parties were making final proof, myself.

Q. Well, did they make any deed at that time, too? A. Not that I know of.

Q. Don't you remember that each one that was not married made a deed—in fact, those that were married made a deed?

A. No, I don't know.

Q. What other matter was there connected with the transaction that occurred right there as soon as they made their mortgage?

(Testimony of Dan W. Tarpley.)

A. The only thing that I know, two or three of them—I don't remember—one or two or three that I paid \$75 to.

Q. Who furnished you the money?

A. McKinley.

Q. And who attended to paying the balance of them?

A. I don't know. I suppose Puter or McKinley did.

Q. They were both there? A. Yes.

Q. Both provided with funds to pay those that located for them, the money? A. Yes.

Q. How is that? [416—248]

A. I think so. They had—they paid the rest of them. I suppose they had the money or they would not have paid them.

Q. They were all paid there in Roseburg at that time, were they not?

A. I don't know whether they were or not.

Q. You don't know? A. No.

Q. Was that as you understood it at that time?

A. Well, I understood that they were to be paid at the time they made final proof. Whether they were paid at that time or not, I don't know. I only paid—I think the only party I remember paying was Ira Pilkington, but there might have been one or two more I paid. I don't remember. I had very little to do with that part—handling the money part. In fact nothing.

Q. Afterwards you got a deed—two or three days afterward? from some of the married men, did you

(Testimony of Dan W. Tarpley.)

not? That is how you got their wives to sign the deed?

A. I remember the fact of going over to Brownsville and getting some deeds from Brownsville.

Q. That was from John Harrison and Blakely?

A. Yes.

Q. Henry Blakely and a fellow by the name of Cooley? They were all married?

A. I don't remember whether they were or not. I remember going over to Brownsville to get the deeds.

Q. The reason for going there was because the wives were not present in Roseburg. They were were married men.

A. Well, I don't know as to that.

Q. The point I am getting at is, did you pay any money when you got those deeds? A. No.

Q. The financial transaction had been concluded at the time [417—249] of making the mortgage.

A. I don't know whether it was or not, as I never handled the financial end.

Q. How long after they made proof was it that you went up to get them—how many days after?

A. Perhaps about a week, I don't remember. A few days.

Q. Just a short time after? A. I think so.

Q. Were you acting as Notary Public at that time? A. Yes.

Q. Commissioned to act as a Notary Public?

A. Yes.

Q. Was McKinley and Puter also?

(Testimony of Dan W. Tarpley.)

A. I think they were.

Q. You know C. A. Smith? A. No.

Q. Never met him? A. Never met him.

Q. At any time? A. No.

Q. Either prior to this transaction or since?

A. Never remember seeing him in my life.

Q. What was done with those deeds and mortgages as soon as you got them?

A. I turned them over to McKinley.

Q. Do you know what he did with them?

A. No.

Q. Now, was McKinley's hearing on the criminal case in Albany before or after you made the settlement with the Northern Pacific?

A. Well I don't know. I could not say as to that. I don't remember the date of the hearing or the date of this settlement with the Northern Pacific.

Q. The settlement was made with the Northern Pacific before [418—250] any proofs were completed, was it not?

A. Yes, I think that settlement was made in Tacoma.

Q. Did Fred Kribs go along with the party to Tacoma?

A. I don't know whether he did or not.

Q. Well, now, some of those proofs were made in April, and they continued on until May 18th or 16th. Was Mr. Kribs there in Roseburg all this time when you were making those proofs?

A. I could not say as to whether he was or not.

(Testimony of Dan W. Tarpley.)

Q. Well, did you see him there about that time, frequently?

A. I saw him in Roseburg several times, but I think he was in Roseburg—appeared quite a while there—he was in Roseburg quite a time, off and on.

Q. Well, when you were not chaperoning entrymen, who were you with, usually?

A. McKinley.

Q. Puter too?

A. Well, some of the time. McKinley and I were together most of the time.

Q. Was Kribs running around with you more or less? A. No.

Q. Where was he stopping?

A. McClellan House.

Q. That is the hotel there? A. Yes.

Q. Did you stop there too? A. Yes.

Q. Also McKinley and Puter? A. Yes.

Q. How many of the entrymen stopped at the McClellan House?

A. I don't know how many. There was a while that we made rates—McKinley did, rather—made rates at the hotel for parties—for those timber men, and there was a part of them later that stopped at some other hotel. They wanted to charge full rate—regular traveling men's rates for the entrymen, and afterwards we took the entrymen to some other hotel. [419—251]

Q. What other house?

A. I don't know the name, down close to the depot.

(Testimony of Dan W. Tarpley.)

Q. Called the Depot Hotel, was it not?

A. I don't know the name. There close to the depot.

Q. After you changed arrangements you took all the entrymen to the Depot Hotel?

A. I don't think I was ever in that hotel in my life.

Q. You directed them where to go?

A. No, I didn't.

Q. You didn't do that? A. No.

Q. Now, you were a proof witness, were you not, upon nearly every—the most of these entries?

A. Quite a number of them, anyway. I don't know how many.

Q. Did you have anything to do with arranging for the publication of notice with the newspaper?

A. No. I was with McKinley when he made the arrangement.

Q. When was that made, with reference to the time you made your filing?

A. I don't know as to the date. I remember going to the newspaper office with him in Brownsville. He made the arrangements with the editor. His name was Cavendar.

Q. Cavendar? A. Cavendar, yes.

Q. What arrangements were made there?

A. I think that he be given terms on the entrymen. For quite a number of them he got reduced rates for so many. He made some arrangements with him. He had done advertising before with the paper, other claims he had filed on. I was with him

(Testimony of Dan W. Tarpley.)

when he made the arrangement, but don't know just what it was.

Q. Did he give him the list at that time that were to be [420—252] published?

A. I don't know whether he gave it at that time, or not, or later.

Q. That you say was shortly after you had filed the first lot of people?

A. I don't remember as to the time. I can remember of going with him to the office, and he was talking with Cavendar. I have known Cavendar for a good many years.

Q. Well, after—do you know when the payment was made, the payment to Cavendar or the paper?

A. No, I don't.

Q. The firm was Cavendar and Brown, was it not? A. Yes, Cavendar and Brown.

Q. That contract that you made with Mealey was—did that include the contract of cutting the trails up there, or was that later?

A. That was later.

Q. That was a later arrangement. What was the purpose of cutting those trails?

A. To be easy to get into the timber.

Q. Easier for whom?

A. Well, anybody that went into the timber.

Q. Who was going in?

A. Anybody that was interested in it.

Q. Cut it so that you and McKinley could walk around and view the timber, or who were you going to take in there?

(Testimony of Dan W. Tarpley.)

A. Well, anybody that would be interested in a tract of timber.

Q. Anybody that would be interested in securing the tract?

A. Wanted to look at the tract, yes, make it easy, so [421—253] that we could go in with a horse, and *for own* convenience too, I suppose.

Q. Did you participate in cutting the trails?

A. I did.

Q. What? A. Yes, sir.

Q. How long were you up there?

A. Oh, I don't know, about ten or eleven days, I guess.

Q. How far after filing was that, before you started to cut the trail?

A. It was along the first of March, some time, the middle of March. I don't know. It was in March, anyway.

Q. You started on that trail business immediately, didn't you, after you started to file and Puter went east?

A. No, the trail wasn't started along—I think some time in the middle of March.

Q. Now, what was the date you said Kribs first got in there? A. The third day of April.

Q. How do you fix that date? A. The date?

Q. Yes. A. By a diary.

Q. Whose diary is that? A. My own.

Q. Have you got the diary? A. I have.

Q. Did you keep a diary at that time?

A. I did.

(Testimony of Dan W. Tarpley.)

Q. Let's see it.

A. (Witness hands book to counsel.)

Q. You and McKinley both kept a diary?

A. I have kept a diary for several years, yes.

Q. What—how do you find your date there? I can't find it. [422—254]

A. Well, I can find it. Here is April 3. At Mealey's. Second at Mealey's, and third, Kribs, Brandeberry and Barr arrived.

Q. That is the way you know that. It was on a Tuesday, wasn't it? A. Yes.

Q. This diary was merely kept to indicate where you were at certain days. You didn't make any extended memoranda?

A. No, no. I kept a diary for several years during that time, before and after.

Q. Now, does this give the date when Puter and yourself and Tarpley got into Albany there?

A. From Mealey's?

Q. With the Mealey's.

A. Yes, Puter arrived there on the 8th of January.

Q. How is that? A. Eighth of January.

Q. Eighth of January.

Cross-examination.

(Questions by Mr. LIND.)

Was that the first time you seen Puter?

A. The first time I ever—the first time I ever met him, you mean?

Q. Yes.

A. No, I had met him before that. Just knew

(Testimony of Dan W. Tarpley.)

him, acquainted with him, was all.

Q. Was that the first time you had ever talked land business with Puter?

A. The first time that ever I remember talking land business with Puter at all.

Q. The eighth of January, 1900?

A. Yes, the first time ever I remember. I might have [423—255] before that, while he and McKinley were together. I might have talked a little something about lands. I wasn't interested in the land until just shortly before that.

Q. How did you happen to meet Puter on that day?

Q. Why, McKinley, I think, came to Portland. Either came to Portland or 'phoned for me to come to Albany. I think he came down to Portland. I am not positive.

Q. How did you get the information?

A. Of what?

Q. Of Puter's coming.

A. Well, talked it over with McKinley. He was going to send for him.

Q. Oh, yes, that had been understood between you.

A. After we first met Mealey, McKinley decided to get Puter up to Albany and talk with Mealey a while. He was over—

Q. That is when you concluded to go into the locating business? A. Yes, sir.

Q. Had McKinley been a locator prior to that time? A. Yes, quite a while before that.

(Testimony of Dan W. Tarpley.)

Q. For how long, if you know?

A. Well, I had known McKinley perhaps three or four years before that. He had been in the business for a number of years.

Q. You said in your direct examination that you made a hurried visit, you and McKinley, to Portland to see Puter, or called him up hurriedly. What was the occasion?

A. Why, knowing that the Northern Pacific had their [424—256] cruisers in this tract of land, townships.

Q. What townships?

A. 14 south, 2 and 3 east—for the purpose of laying—

Q. Ranges 2 and 3 east? A. Yes.

Q. Township 14?

A. Township 14 south, ranges 2 and 3 east. They had their cruisers in there for the purpose of picking out the good sections and laying scrip on them, Northern Pacific Scrip. That is what Mr. Mealey told us when he came down, that cruisers were in there then.

Q. Then Mealey gave you the first information in regard to this land, did he? A. He did.

Q. Had the lands been but recently surveyed, or surveys come in?

A. I don't know as to that. He told us that he knew what the land was. He helped survey them himself.

Q. What conversation did you and Puter and Mc-

(Testimony of Dan W. Tarpley.)

Kinley have on that occasion? What was the arrangement?

A. Well, the arrangement—it was a contract.

Q. Were you a party to the arrangement between McKinley and Puter? A. No, sir.

Q. Who did you work for?

A. For Puter and McKinley both, most for McKinley. All the transaction was done with McKinley.

Q. Do you remember the arrangement between McKinley and Puter?

A. No, I never heard the arrangement between Puter and McKinley. I heard the arrangement between Puter and McKinley [425—257] and the Mealeys. In fact, I wrote that contract out myself.

Q. What was the contract?

A. Why, the nature of the contract was for the information that Mr. Mealey would give of the sections—claims, that they would pay him so much a claim for every section of good timber. That is, I think there was a stated—a claim that would cut so many million feet a claim, or over, he would receive—

Q. He was familiar with the lands and he was to point out the lands, so that it—

A. Of goos lands, of good sections.

Q. Of good sections. Now, what was the arrangement between Puter and McKinley with reference, so far as you heard it discussed, with reference to locating claims?

A. I don't know exactly what the arrangement between them was, only, that we were to file these—get

(Testimony of Dan W. Tarpley.)

these entrymen to file on the timber land and charge them—charge \$100 location fee.

Q. Were they to charge \$100 location fee?

A. Yes.

Q. What were your instructions when you—when it was suggested to you to solicit entrymen?

A. My instructions?

Q. For locations.

A. My instructions were to secure the entrymen, take them to Roseburg and file them on the claims.

Q. What were you to tell the entrymen, if anything?

A. The entrymen—that they were to receive—it would be at least \$75 for the claims—for taking up the [426—258] claims. That they would furnish the money. These parties didn't have the money to pay—that the money would be furnished—they would get some one to furnish the money and take a mortgage on the claim.

Q. Was there anything said about a conveyance or a deed? A. Nothing whatever.

Q. Anything said about selling the claim?

A. No, sir.

Q. Did any of the entrymen—did you refer any of the entrymen to Mr. McKinley for fuller discussion or explanation of the plan?

A. Well, I don't remember any particular case. I know that we talked—that the two of us together afterwards talked to some of the entrymen that I had seen. We would both go back and both of us talk to him. [427—259]

(Testimony of Dan W. Tarpley.)

Q. How did you tell the entrymen that that money would be raised?

A. Told them that we would find somebody that would loan the money on the claim.

Q. Did you state what amount you expected to obtain on the claim by way of mortgage?

A. No, I don't know as I did.

Q. Did you say to them what the location fee would be? A. Yes, sir.

Q. What did you say it would be? A. \$100.

Q. Did you say that you expected to get enough money so that you would get at least \$100 out of it—you and McKinley and Puter—and that they would get how much?

A. They were to get at least \$75. I didn't state that I was to get anything out of the \$100 location fee. I was not interested in that part at all—that is, received no—was not to receive any certain percentage of the location fee or any moneys made out of it. I was merely paid by Puter and McKinley.

Q. Did you, in any conversation that you had with any man or woman that you located, say anything about selling the land? A. No, sir.

Q. At any time? A. No.

Q. When the final discussion about selling the land was had, if any, were you a party to that?

A. No, I had nothing to do with it.

Q. Did you help negotiate the purchase of any claim? A. No, sir.

Q. That you recall? A. No, sir.

Q. Who did, then, if anyone? [428—260]

(Testimony of Dan W. Tarpley.)

A. Well, I don't know.

Q. McKinley or Puter did?

A. Perhaps both of them, I don't know.

Q. You don't know?

A. No, I don't know who negotiated it.

Q. Did you see the Northern Pacific cruisers in this tract of land when you were up through there?

A. I didn't go any further than Mealey's place, and McKinley and Mealey went out into the timber, and I stayed at the house until they came back. They went out and stayed out one night.

Q. I mean, when you were cutting the trail?

A. Oh, no, there were no cruisers in there at that time.

Q. There were no cruisers there?

A. Not at that time, no.

Q. Did you go up with parties as far as Mealey's, who intended to make filings, to examine the lands?

A. Yes, I went up there one time with 17 parties. That was before they made final proof.

Q. Before they made final proof. Do you remember seeing Mrs. Beeman going up there?

A. I remember seeing Mrs. Beeman at a place this side of there called Sweet Home, where I stopped for dinner. I think the same time I took these parties up. I made several trips in there—14 or 15 trips in a short time. I remember meeting her at Sweet Home one time.

Q. Who was with her, if you recall?

A. I think Mr. Beeman was with her.

Q. Did you have any talk with Puter about this

(Testimony of Dan W. Farpley.)

land arrangement, particularly? A. No.

[429—261]

Q. Did you ever discuss the matter with him directly at all?

A. Oh, I don't remember just exactly what it was. I was present lots of times when he and McKinley were discussing the matter. Discussing the matter of re-advertising it one time.

Q. When did you first hear the name Kribs mentioned? I think you said that you had never met Kribs until April 3d.

A. Well, I don't know that I ever heard his name mentioned before that day—April 3d.

Q. How long did you say Kribs remained up there at that time?

A. Well, I can tell exactly by referring to this diary of mine.

Q. Well, refer to your diary.

A. All right. On Tuesday, April 3d, McKinley and Kribs, Puter and Brandeberry arrived. That is, at Mealey's place—about eight miles from the land—seven or eight miles. On Wednesday, the 4th, McKinley, Kribs and I went into the timber—Puter was along—Puter, I think, went into the timber on that trip, but—

Q. How?

A. I think Puter was on that trip, but I have it here McKinley and Kribs and I went into the timber. That is Wednesday, the 4th. The 4th in the timber, 5th returned back to Mealey's. Was in the timber—stayed out one night, went out one morning—two

(Testimony of Dan W. Tarpley.)

days and a night.

Q. You say that was—was that entry made at the time? A. Made at the time, yes.

Q. Is that the first time that you met Kribs?

A. That was the first time I ever met Fred A. Kribs—the 3d day of April, 1900.

Q. You said McKinley gave you some money to pay some of [430—262] these entrymen. Do you remember how many?

A. No, I don't. The only one that I can remember I paid was Ira Pilkington.

Q. Was that after or before the mortgage had been made?

A. I think it was at the time the mortgage was made—about that time. Perhaps it was right after.

Q. Now, in procuring these entrymen, did you solicit them to make these entries? What did you say to them—how did you approach them?

A. Well, I usually approached them by asking if they had ever used their timber right—taken up a claim under the Timber and Stone Act. If they said no, I told them I knew where there was some good timber claims that were vacant, and they wanted to know what it would cost to take up a claim. I told them \$400 to the Government and the expenses of two trips to the Land Office and perhaps a trip to the land.

Q. What else?

A. And if they said they didn't have the money to take up a claim I told them that if they would file on a claim that McKinley and Puter would furnish

(Testimony of Dan W. Tarpley.)

the money for them to make their final proof. Would loan them the money—get the money for them.

Q. Yes?

A. And if they said all right, I said that there would be at least \$75 in it for them. If they wanted to take up a claim all their expenses would be paid to and from the Land Office, railroad fare, hotel bill and filing fees, and that there would be at least \$75 in it for them. That they would give a mortgage on the claim—add \$100 location fee to the price that was paid to the Government and the expenses, and [431—263] take a mortgage on it. If they said yes, we took them to the Land Office and filed them.

Q. Was that all there was to it?

A. All at that time that I remember.

Redirect Examination.

Q. How far is Sweet Home from this land?

A. Sweet Home must be—oh, from the land, Sweet Home must be 20 miles—something like that.

Q. That is where you saw Mrs. Beeman?

A. Yes. Well, it is from 15 to 20 miles—something like that.

Q. What did you get out of the transaction?

A. Well, I don't know exactly how much I got out of it. The arrangements I had for my compensation was that McKinley told me if I would help out in the matter in getting these fellows—taking them to the Land Office and taking them out to the land—that he would see that I was well paid for it. So I was paid the different sums stated at different periods. I don't remember what it was. Maybe a

(Testimony of Dan W. Tarpley.)

few hundred dollars.

Q. McKinley furnished you with money right along from time to time? A. Yes.

Q. Had been for some time previous?

A. No.

Q. Some months previous to that?

A. No. He only furnished money—I sold him a timber claim up in 14—2; 15, I think it was; 15—2, I had taken up myself.

Q. You and he had been sporting around Salem there for several years together, hadn't you?

A. No, sir. [432—264]

Q. You hadn't?

A. No, I knew McKinley three or four years before that, but I really never was with him very much until along in the Fall—early in the Fall of 1899. I had met him—met him in Salem and Portland. I was not very well acquainted with him until the Fall of 1899.

Q. From that time on you continued to operate with him up until practically the present time?

A. Well, yes.

Q. Except when he was where he could not operate? A. Yes.

Q. Now, then, the people that you approached were people whom you knew had no money?

A. No, I didn't know it. Some of them were and some wasn't.

Q. Most of them were not?

A. Well, most of them did not have the money to take out the claims here.

Q. As a matter of fact, you knew that before you

(Testimony of Dan W. Tarpley.)

went to see them?

A. Well, I didn't know; never inquired.

Q. For instance, a fellow by the name of Barr over at Albany—Topsy Barr, they called him—you knew he didn't?

A. I didn't know he didn't have any. He could get some. His father—his folks were well fixed.

Q. You knew he was what they call a dope fiend, there? A. Yes, he was.

Q. You knew Frank Starr did not have money?

A. No, I didn't know he didn't.

Q. Well, you thought he didn't?

A. I didn't know.

Q. What? [433—265]

A. I didn't know whether he had any money or not.

Q. And Charlie Barr, there at Salem, working on a hop ranch—you knew he didn't have any money?

A. No, I didn't know it.

Q. Didn't know that?

A. No. In fact, I didn't get Charlie Barr. Never talked—

Q. No, I guess McKinley got him. And Pilkington, didn't you know he didn't have money?

A. I thought McKinley got—I am not positive.

Q. Well, you made it a point to approach men who would have to get the money from you fellows, didn't you?

A. No, otherwise we would not have gone to George Meyers and wife, and Mrs. Lunn, his sister in law.

Q. You put him up as a shining example. He

(Testimony of Dan W. Tarpley.)

pulled out of it, didn't he?

A. No, he happened to be a party who relinquished to the Government. He had nothing to say. In fact, it was drawn, selected without their consent. As to whether they would go on and prove up or not. They would not have a chance to say. It was the Northern Pacific and Puter decided on that—who should relinquish and who should prove up.

Q. The entrymen had no choice about that?

A. No.

Q. How could Puter relinquish for the entrymen? A. What is that?

Q. How could Puter relinquish for the entrymen?

A. Get them to relinquish. Some of them refused to relinquish. Explain the plan to them.

Q. Who refused, now?

A. Meyers refused.

Q. And his wife? [434—266]

A. And his sister in law.

Q. And his sister in law. They were the only ones who did refuse?

A. They didn't make final proof.

Q. No, their entries were cancelled. They would not go on.

A. I don't know whether they were the only ones that refused or not.

Q. All the rest relinquished, didn't they?

A. I don't know.

Q. What?

A. I think so, but am not positive.

Q. Those that did relinquish, you paid them part

(Testimony of Dan W. Tarpley.)

of what you agreed to pay them before any location, to get them to relinquish? A. Yes.

Q. Some of them wanted you to make up the whole \$75, didn't they?

Mr. LIND.—I think that is too general.

Mr. McCOURT.—Well, I can't designate any of them. I don't know which one it was. These fellows are the only ones who know, and I don't know whether they remember.

A. I think so. I don't know whether they wanted the full amount or not, but I know some of them wanted—some fellows in Salem, Brockett and Starr, that relinquished—I am not positive whether they relinquished or not. I know they refused to relinquish unless—I think the most of them got \$15 or \$25. I don't know what they wanted. They wanted a sum larger than that, anyway. Maybe \$50 or \$75 or \$100. I don't remember what amount it was.

Q. Now, then, when you took those deeds, you didn't make— [435—267] there was no negotiation about it, was there; that was simply the consummation of the original understanding?

Mr. LIND.—I object to that. I dislike to interrupt. He has testified that he had nothing to do with the taking of the deeds. Knew nothing about it.

Mr. McCOURT.—He did take a good many.

Q. You were present when a lot of those were executed there in Roseburg, weren't you?

A. I think I was a witness on some of them.

Q. Yes. Quite a number.

A. I don't know how many.

Q. Now, there was no negotiation regarding mak-

(Testimony of Dan W. Tarpley.)

ing that deed. It was signed as a matter of course by the man when he got \$75?

A. I don't know as to that.

Q. You didn't see any negotiations carried on?

A. No, I didn't. Those I witnessed I had nothing to do with the arrangement. There was no negotiations in the signing of these.

Q. They got \$75 right along there?

A. Well, I don't know. I didn't see that. I never saw any of them get \$75, as far as that is concerned, except what I paid myself.

Q. Except what you paid yourself. Now, then, that \$100 location fee that you talked about there, did anybody ever pay that?

A. Ever pay it?

Q. Yes. A. I don't know.

Q. What is that?

A. I don't know anything about that.

Q. You didn't see anybody pay it? A. No.

Q. Didn't you understand or know that you—that McKinley [436—268] and Puter had effected an arrangement with Kribs, or C. A. Smith through Kribs at the time final proof was made, to furnish the money there and take the land?

A. Yes, I knew that Kribs—that they had made arrangements with Kribs to furnish the money. Knew that at the time that McKinley brought him up to Mealey's there. He told me then Kribs was going to furnish the money.

Q. He was going to get the land?

A. He didn't say about that. He said he was going to furnish the money.

(Testimony of Dan W. Tarpley.)

Q. You understand they was going to get the land—the same people?

A. No, I didn't understand he was going to get the land.

Q. You didn't know that?

A. No. The first I knew he was going to take the land was the day final proof was made.

Q. Yes, he was going to take the land, taking it right there.

A. Well, either there or shortly afterwards—I don't know.

Q. What did you understand the purpose of the mortgage to him and the deed to Willd the same day? What was it for?

A. I don't know. I didn't know there was. Don't know anything about that.

Q. You knew they were making these deeds and mortgages at the same time, didn't you?

A. I don't know. I know on the day final proof was made, McKinley told me that Kribs was going to take the land, or loan the money. That is the first intimation that I knew it was to be sold or transferred at all.

Q. Yes, they went right ahead with that mortgage and added \$100 to it for filing people?

A. These mortgages were given at the time the parties [437—269] proved up as security. The deeds, some of them, was secured a week—several days after that.

Q. How many? A. I don't know.

Q. Isn't it a fact, there wasn't a single deed secured afterwards—with two or three exceptions—no

(Testimony of Dan W. Tarpley.)

deed secured afterwards except from married men whose wives were not there?

A. I don't know as to that.

Q. What? A. I don't know as to that.

Q. Do you remember going out and getting any single men's deed afterwards?

A. No, I don't remember of getting any deeds except of the Brownsville fellows.

Q. Did you get Hugh Blakely's deed in Brownsville?

A. I think so. I am not positive. I went over and got some and I don't remember how many I got.

Q. Did you get Frank Burford's deed in Brownsville? A. I don't know whether I did.

Q. Don't you recall it was married men, Henry Blakely, John Harrison and a man by the name of Cooley, J. P. Cooley?

A. I don't know. I suppose those we got there will show. I don't remember which ones I got. I may have got all in Brownsville—two or three. I remember going over and getting some deeds.

Q. Now, didn't you understand when you were talking with these people there, that McKinley and Puter were intending to get title to that land, or in it so they could give it to somebody else?

A. When they signed those?

Q. No, when you talked to these entrymen.

[438—270]

A. State that question again.

Q. (Read.)

A. Why, no, I didn't understand it.

Q. What did you understand?

(Testimony of Dan W. Tarpley.)

A. Well, McKinley told me that when he was locating on these lands that they was—they didn't have the money, but was going to put these people on these lands—going to file them, and would give ten weeks and try to get somebody to furnish the money.

Q. And take the land?

A. He didn't say anything about taking the land. Said they would pay \$100 location fee each—there were 57 claims. If the lands were sold—there was a \$600 mortgage. If the lands were sold, there would be \$5,700 in it anyway, if he didn't get only \$600; there would be \$5,700—\$100 a claim for 57 claims.

Q. That was in case the fellows went back on the bargain you had made with them and didn't let you have the land?

A. There was no bargain made at that time.

Q. You understood you was making a bargain with them? A. With who?

Q. With the entrymen?

A. Oh, with the entrymen—no.

Q. By which you, McKinley, Puter, or whoever you designated would get title to the land?

A. There wasn't anything said about it at that time.

Q. I understand. Nothing said about it, but that was the understanding?

A. You will have—read that question again, please.

Q. (Read.)

A. Bargain with the entrymen?

Q. Yes. [439—271]

A. For what?

(Testimony of Dan W. Tarpley.)

Q. By which he was to get \$75 for the use of his right in that land?

A. Well, we made the bargain with the entrymen. They was to get \$75 for filing on a claim—timber claim. We was to furnish the money if they didn't have it.

Q. And they all told you they did not have it?

A. Yes, I guess they did. [440—272]

Q. And you went right ahead and furnished every cent of expense, did you? A. Yes.

Q. Never an entrymen offered to pay his fare or do anything of that kind?

A. No, I don't think they did.

Q. You, McKinley and Puter attended to the whole transaction? A. Yes.

Q. When they got down there and made proof, they were expecting their \$75.00, and they got it immediately?

A. They were told that they would get it when they made final proof.

Q. Yes, sure; and they took a mortgage and deed simultaneously? A. Well, I don't know.

Q. Practically?

A. Well, I don't know as to that—whether it had been understood—the deeds of some of them were made after the mortgage was executed; but I don't know of any of them that was where they had mortgaged, and the deed was made at the same day—I don't know. I had nothing to do with the making of the deeds.

Q. Didn't you know at that time, when you first started to talk with those entrymen, that that \$100

(Testimony of Dan W. Tarpley.)

proposition, if it was mentioned at that time, was merely a precaution against the entryman going back upon his illegal agreement with you? A. No.

Q. You did not? A. No. [441—273]

Q. Didn't you know that McKinley and Tarpley expected to get a title to that land, so they could handle it, by means of that transaction?

A. I don't. I do not.

Q. You didn't know that?

A. No, sir. I don't know how they could get title to it—they didn't have the money.

Q. What?

A. They couldn't get title to it themselves. They didn't have the money.

Q. Didn't they go right out to get the money?

A. Yes, they went out and borrowed the money.

Q. Did they borrow the money?

A. That is what they said.

Q. You knew that they were negotiating the sale of those lands in the east from the very first, didn't you?

A. No. I knew they were trying to get the money to finance it.

Q. Trying to get a buyer for the land?

A. I know that Puter made a trip east to raise the money.

Q. Two of them?

A. Well, he might have made two. I don't know.

Q. Now, then, when that deed and mortgage were signed there, did you think that you were securing McKinley and Puter a \$100 location fee?

A. Well, now, understand you, now that I didn't

(Testimony of Dan W. Tarpley.)

have anything to do, and had no interest in the transfer of these lands whatever.

Q. Yes, but you were interested in negotiating the deal?

A. No, I was not. In negotiating the deal?
[442—274]

Q. That is, you were getting people to file, and getting those lands in condition to take them away from the United States?

A. Yes, that part of it.

Q. You were a lawyer?

A. I was not acting in a legal capacity.

Q. No, but you had been admitted to the bar?

A. Yes.

Q. What did you suppose you were paying that \$75 to those fellows for?

A. I supposed I was paying them the \$75 for taking up the timber claim.

Q. That you had agreed to give them?

A. Yes. I stated two or three times we agreed to pay them \$75.

Q. Yes?

A. Advance them \$75 on a timber claim.

Q. And right then and there, you still had a \$100 claim against them for a location fee?

A. Yes; charge them \$100 for a location fee, sure.

Q. Why didn't you take a mortgage for \$525 and keep the \$75?

A. Well, we agreed to advance them this money. I suppose as well advance it to them then.

Q. Why advance a man money, for securing him 160 acres of land?

(Testimony of Dan W. Tarpley.)

A. If they didn't pay the location fee, couldn't they go and sell the land, and where would you get your location fee if they sold the land, without making a mortgage? [443—275]

Q. Suppose you kept that \$75 right in your hand there instead of handing it over to the man you would have had \$75 on your location fee, wouldn't you? A. No.

Q. What is the use of giving a man who owed you \$100, \$75, and have him owing you more than that?

A. Well I don't know—we wanted to get these filings on this land. We had a few days to beat the Northern Pacific to the Roseburg Land Office—we had to hurry; and it really was by advancing these fellows the money—it was an inducement for them to go and take the land up, take it up in a hurry, we only had a few days.

Q. That was the thing that got the filers, wasn't it? The \$75?

A. Why, I suppose, they wasn't going out there for nothing—sure.

Q. No. The timber claim was no object to them—it was the \$75, wasn't it?

A. A timber claim wasn't worth very much at that time, \$75 was a pretty good profit to make on a timber claim at that time.

Q. And they understood that that was the profit they were making for the use of their right for the benefit of you, McKinley and Puter, didn't they?

A. I don't know as they did.

Q. What?

(Testimony of Dan W. Tarpley.)

A. I don't know they understood that.

Q. You understood it? A. No, I didn't.

Q. What?

A. No. I told them there was \$75—that there was [444—276] at least \$75, and maybe more. Some did get more out of it at the time they signed the deeds. Some of them did get more money than \$75.

Q. Yes, some of them got \$100 because they held you up, didn't they?

A. They got more money.

Q. Yes?

A. They wasn't in a position to hold us up any. We had a mortgage on it. How was they going to hold us up?

Q. They did that before they gave you the mortgage? A. No. No, no, sir.

Q. Let me ask you, did you take any mortgage for more than \$600? A. I don't think so.

Q. No? A. Not that I know of.

Q. Why didn't you take one for \$25 more, when you had to pay a fellow \$100 instead of \$75?

A. How is that?

Q. You didn't take any mortgages—when you paid a man \$100 instead of \$75, you took just exactly the same kind of mortgage you took when you only paid him \$75, didn't you?

A. Well, there was only two or three that I know of that got \$100.

Q. Who got \$100 that you know?

A. I know Basil Wagner received \$100, and also Harry Barr received \$100. The reason they got this

(Testimony of Dan W. Tarpley.)

\$25 extra, that I know of is that Wagner made two or three trips with me up in the mountains, [445—277] and Barr made a trip up there—I think Barr made two trips—and we paid them \$25 extra. That is the only ones that I know of, that I had anything to do with, that got \$100.

Q. But you didn't take any more mortgage from them than you took from these that only got \$75?

A. The \$25 was not a loan.

Q. What was that?

A. It was not a loan.

Q. What was that?

A. For compensating them for what they had done. Wagner made two or three trips with me in the mountains; and Barr made—I don't know—I think two. He came up there the same time Kribs did, and drove the team up.

Q. That didn't have anything to do with the timber claim at all, then? That was for his services outside of that?

A. No, it was paid—I told him at the time—before the money was paid to him. When I paid him, I paid him \$100. That is the only ones I know of that got \$100. I think most of them, all I ever talked to, was \$75 was the sum that they got.

Q. You remember having a talk with me in the Oregon Electric car going up to Salem, about two *yars* ago, a little less?

A. I remember, yes, something on the electric car.

Q. About this same business?

(Testimony of Dan W. Tarpley.)

A. Yes, but I don't remember what the conversation was.

Q. And do you remember talking to me afterwards in Salem, about two or three hours afterwards, when you [446—278] met me on the street, and renewed the conversation?

A. No. Was it on the street?

Q. Yes. You remember that, don't you?

A. Was it on the street?

Q. Yes.

A. Not on the street.

Q. Well, in a saloon,—Eckleman's saloon—in which you said to me that all of the entrymen that you had anything to do with, and knew about, understood before they made their filings that you people were going to get the land, and you understood you were going to get the land, and they were going to get the \$75 for the use of their right?

A. I made that statement to you?

Q. Yes.

A. No, sir. I don't remember ever saying that.

Q. Don't you remember? A. No.

Q. On the car that you made a statement similar to the one you are making here now, and I told you that I was expecting to hear that very story, but I didn't know who would be the first one to spring it?

A. Yes, I remember that.

Q. And now I found that you were the man that was going to spring it on me first?

A. And I still state that.

Q. And I acted kind of hostile, didn't I?

A. I don't know.

(Testimony of Dan W. Tarpley.)

Q. And you followed me up to renew the conversation, and told me this other thing, in Salem, after I got there. [447—279]

A. Oh, no, I didn't. I didn't know you were in there, at all, and I met you in there. I didn't know you were there.

Q. You called me aside to tell the same thing again.

A. I did call you aside. I don't know exactly what the conversation was.

Q. But you say now that you didn't say to me there that every one of those entrymen understood that he was to get \$75, and you people were to get the land?

A. I do. I don't ever remember saying that to you or anybody else.

Q. No? A. No, sir.

Q. There in the saloon? A. Yes.

Q. Yourself and I being present, and talking about this same matter? A. Yes.

Q. Well?

A. No, sir, I don't think I ever made that remark to you or anybody else.

Q. Didn't you answer in this way to me: "Of course they did"? A. No, sir.

Q. That is all.

Witness excused. [448—280]

[Testimony of Harry Saltmarsh, for the
Government.]

HARRY SALTMARSH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Saltmarsh?

A. 784 Kelly.

Q. And what is your business?

A. I am on the beer wagon,—bottle beer wagon.

Mr. GEARIN.—What did he say his business was?

A. Bottle beer business.

Q. Where were you living in January, February and March, 1900?

A. Living in Albany.

Q. What were you doing there at that time?

A. I think I was painting at that time.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Dan Tarpley? A. Yes, sir.

Q. And did you know them then?

A. Why, I think I got acquainted with them that year.

Q. You took up a timber claim there, one of these claims in this case? A. Yes, sir.

Q. Tell the Court how you came to take that claim?

A. Well, it was so long ago I can hardly remember much about it. Somebody introduced me to Mr. McKinley, I believe, and Tarpley, and they pro-

(Testimony of Harry Saltmarsh.)

posed to me to take up the claim. And I told them all right. They told me what there was. [449—

281]

Q. What did he tell you?

A. He offered me \$75, I believe, at that time.

Q. And he was to pay the expenses and fees?

A. They were.

Q. Well, then, after that conversation, what did you do?

A. Well, there was a crowd of us went to Brownsville, took a rig, we met them in Sweet Home.

Q. Who were in the crowd?

A. Well, that is pretty hard to say.

Q. Well, as many of them as you can recall, Mr. Saltmarsh.

A. Well, there was very few that I can remember. I think Bas. Wagner was there, McKinley, Tarpley, Charley Farrell, and some parties from Salem. I think one of the Barr boys was there.

Q. This was up to the land?

A. Yes, sir, when we went up to look at the land.

Q. Had you been to Roseburg yet?

A. No, sir.

Q. Well, after you saw the land—whose place did you stay at up there when you got up there?

A. Mealey's.

Q. How far did you travel from Mealey's to see the land?

A. I don't know. It was some three or four or five miles, I think. I don't know how far it was—don't remember.

Q. After you had looked at the land, what did

(Testimony of Harry Saltmarsh.)

you do—what occurred?

A. After we looked at the land, we came back to the house again. [450—282]

Q. In Albany?

A. Came back to Mealey's. Then we came from Mealey's to Lebanon, and from Lebanon to Albany. I didn't go back through Sweet Home. I went back the other way.

Q. How long was it then before you went down to Roseburg to file?

A. I don't remember whether it was that same week or not,—right in there close. I think it was the same week that we went to the claim.

Q. And who went to Albany with you and looked after you? A. Who went to Albany?

Q. I mean to Roseburg.

A. Why, McKinley and Tarpley.

Q. And how many of people locating were in that party?

A. Oh, I guess there was 15 or more. I don't remember how many there was. There was quite a crowd of us.

Q. Who paid your fare?

A. Well, I don't know who paid it. I supposed that Mr. McKinley seen to that. That was the way it was understood.

Q. When you got to Roseburg, what did you do?

A. Why, I don't remember whether we got in there at night or in the morning, but I think we got in there in the morning, and we filed on the claims, and came back to Albany.

Q. Then, when did you next hear from the claim,

(Testimony of Harry Saltmarsh.)

and who gave you the notice?

A. I don't know whether it was McKinley or Tarpley. It was quite awhile.

Q. What did they say to you then at that time?
[451—283]

A. They said something about going back out to Roseburg again to prove up, make the final proof.

Q. Did they appoint a time then for you to be ready to go? A. I think they did.

Q. Then, what did you do when that time arrived? A. We went to Roseburg.

Q. The same party that had gone up to file there?

A. Very near—very near the came crowd.

Q. Were McKinley and Tarpley along?

A. All excepting some of them that relinquished.

Q. How is that?

A. There were some of them that relinquished.

Q. In the meantime? A. Yes.

Q. Had you been asked to relinquish?

A. No, sir. Only through a Northern Pacific attorney—Norton, I believe is his name.

Mr. LIND.—What is that?

A. A Northern Pacific attorney came and wanted me to relinquish, and I would not relinquish.

Q. Well, when you got up there this time to prove up, what occurred? A. Well, we proved up.

Q. Where did you stop—do you recall?

A. Well, I think it was the McLellan House.

Q. Did all the balance of the party stop there?

A. I don't know. I know there was quite a few of us stopped at the McLellan, and we ate in the Mc-

(Testimony of Harry Saltmarsh.)

Lellan House, and we roomed cat-a-corner from there.

Q. Where? [452—284]

A. Catercornering from there. It is an annex, I suppose, to the McLellan.

Q. You made proof at the Land Office?

A. Yes, sir.

Q. Did you have any conversation with McKinley or Tarpley before that, before going to the Land Office?

A. They just says we was going up there to make final proof, and everything would be straightened up.

Q. Well, after you had given your proof there in the Land Office, what did you do then?

A. I think we signed some papers.

Q. Where? A. In the Land Office.

Q. Was that after you had finished signing the things that the officers asked you to sign there?

A. Which? Q. That you signed papers.

A. Yes, sir.

Q. Who gave you the papers to sign, that you refer to?

A. I don't remember now who that was. I don't remember whether it was McKinley or whether it was Mr. Kribs.

Q. Was Kribs there?

A. He was there at the final proof, yes, sir.

Q. In there while you were making proof?

A. I think he was. I could not say for sure. I don't know whether he was in the room there or in another room adjoining.

Q. How near was this adjoining room? Did you

(Testimony of Harry Saltmarsh.)

go into an adjoining room? [453—285]

A. I think I did.

Q. You don't recall whether Kribs was in there or in the Land Office? A. No, I cannot.

Q. How many people went, or how many people were there signing similar papers?

A. Oh, I guess there were about 20 or 25.

Q. That many? A. Yes, sir.

Q. Well, after you got your paper, what did you sign, do you know?

A. Well, I supposed to be signing a mortgage—I supposed that was what it was.

Q. Anything else?

A. I didn't look it over much.

Q. You didn't look it over? A. No.

Q. What occurred then after you got it signed?

A. We left the Land Office and went down to the train to catch the train home.

Q. How long after you had made proof and signed these papers was it that you went to catch the train?

A. Oh, I don't know. I can't tell. I don't remember.

Q. An hour—two hours?

A. Well, that is something I cannot recall.

Q. Well, what occurred when you got to the train?

A. Well, before I got on the train, McKinley handed me \$75.

Q. Hand anybody else any money?

A. I suppose he did. I seen him handing Barr some money—Harry Barr.

Q. How much did he give Barr? [454—286]

(Testimony of Harry Saltmarsh.)

A. I do not know.

Q. Did you see him handing the balance of the fellows anything that were there?

A. No, I don't know as I did. What they got I don't know. What Barr got, I don't know.

Q. You didn't talk it over with Barr?

A. No.

Q. You were not married at that time?

A. No, sir.

Q. Well, did you ever sign any deed or other paper after that? A. Yes, sir.

Q. When?

A. About a year or so afterward.

Q. Where was that?

A. In the Revere House in Albany.

Q. Who was present?

A. Why, Mr. Kribs and a special agent. I don't know whether there was a stenographer there or not.

Q. How did you find out how to get up there?

A. Why, McKinley—I was working at the brewery then—he came out and told me to go down to the Revere House; that Mr. Kribs wanted to see me to make an affidavit there, before a special agent, told me the number of the room. So I went down to the room.

Q. Did McKinley give you any instructions before you went down there?

A. No. He said Mr. Kribs would be there.

Q. Did the agent examine you?

A. Yes, sir.

Q. Who answered the questions? [455—287]

(Testimony of Harry Saltmarsh.)

A. Well, I answered most of them. What I didn't know, why Mr. Kribs would either nod his head one way to me, or shake it the other, and I would answer yes or no.

Q. How did you know how?

A. Well, the way the question was put to me.

Q. Well, did you have any understanding that Kribs was to nod or shake his head?

A. No, sir.

Q. He just sat there and did it? A. Yes.

Q. Did you know at that time that you had deeded the land to anybody? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Did you know whom you deeded it to?

A. Supposed to be deeding it to Kribs or John A. Willd—I don't know which it was.

Q. That John A. Willd—you didn't know anything about at that time?

A. I never seen the man.

Q. What? A. I never seen the man at all.

Q. When did you first hear that you had deeded the land to John A. Willd?

A. That was supposed to be the way I understood it—that Mr. Kribs was acting as agent for John A. Willd.

Q. At the time you got the \$75?

A. That is the time I got the \$75.

Q. Did you talk with Kribs personally about it?

A. No, sir; I did not.

Q. Whom did you talk with?

A. All my transactions was with McKinley and

(Testimony of Harry Saltmarsh.)

Tarpley. [456—288]

Q. Well, did you ever get any money or any other money out of the thing except the \$75?

A. Yes, sir.

Q. When? A. When I made the affidavit.

Q. What did you get then?

A. I don't remember whether it was five or ten dollars.

Q. Who gave you that?

A. Mr. McKinley. No, Kribs.

Q. When did he give you that?

A. Right after I signed the affidavit.

Q. How long was it before you went into the Revere House there that McKinley came to see you?

A. Why, he came out to the brewery, and seen a man I was working for, and he told me I could get off for awhile. I don't remember whether it was in the morning or afternoon. I went right down at that time and went right into the room. I don't suppose it was half an hour after I had seen McKinley till I was in the room.

Q. Now, then, in those answers that you gave there before Stratford, the special agent, I will ask you if you remember being asked: "Who, if any one, did you pay for locating you on the land?" and giving an answer: "McKinley, \$125."

A. I answered that, did you say?

Q. Yes, did you tell the special agent you paid McKinley \$125 for locating you?

A. If that was the way the question was put, I suppose I did. I don't remember whether I did or

(Testimony of Harry Saltmarsh.)

not. I guess I did if it is there. [457—289]

Q. Did you ever pay McKinley \$125?

A. No, sir.

Q. Or any other sum? A. No, sir.

Q. This question, "Did you borrow the money or any part thereof with which you paid the Government for this land? A. I did. I borrowed \$600 of Frederick A. Kribs." Did you answer that in that way? A. I think I did.

Q. Had you borrowed any \$600 from Mr. Kribs?

A. I was supposed to borrow it. I had never seen it. He was supposed to forward that money.

Q. Forward it where?

A. Well, for all expenses.

Q. Whom was the expenses paid to?

A. I supposed that he paid the Government for the land.

Q. Do you know how much the land cost?

A. It was supposed to cost \$2.50 an acre.

Q. Well, that would be \$400. And you got \$75?

A. Yes.

Q. What did you suppose he did with the rest of the money?

A. Well, I don't know. I suppose he kept it. I never seen any money only the \$75.

Q. It says: "Did you have the transaction with Mr. Kribs personally, or did some one act as his agent in making the loan? A. With Mr. Kribs personally."

A. No. I done all the business mostly through McKinley. I did have a little talk, I believe, once

(Testimony of Harry Saltmarsh.)

with Kribs, but not much. I don't remember what it was.

Q. Well, who answered that that way to that? Did you answer it that way?

A. I think I did. [458—290]

Q. Had anybody instructed you that you had better answer it that way?

A. Well, it was the supposition that I was to get the money through Kribs.

Q. But I mean when you were talking with Stratford now. That was a year afterwards.

A. Oh, I don't remember.

Q. You don't know how you happened to answer that? A. No.

Q. "Was the money paid you in cash or by a check on the bank? A. In cash."

A. Well, it was supposed to be cash when he put it into the bank, or into the Government bank.

Q. Did you see any of it?

A. No, sir. I never seen any of it.

Q. Was any of it paid to you? A. \$75.

Q. "Where was the money paid you at?" A. In Roseburg, Oregon, at the hotel." Do you remember giving that answer? A. No.

Q. What? A. I don't remember.

Q. Well, were you paid at the hotel?

A. No, sir. He paid me at the depot. That is, he give me \$75.

Q. Now, then: "What disposition, if any, have you made of the land? A. I have sold it to John A. Willd." Did you answer that in that way?

(Testimony of Harry Saltmarsh.)

A. I don't remember. The mortgage was due, and I supposed that would be the way I would answer, because [459—291] I was supposed to get this money through Kribs from Willd. I supposed that I answered it that way.

Q. How much?

A. Money for the claim, that was all.

Q. "How much did you receive for it? A. \$900."

A. I don't remember that.

Q. Did you ever answer Stratford that you had got \$900 for that land?

A. I don't remember of it.

Q. What?

A. I don't remember that. I don't think I ever did.

Q. "Who, if anyone, acted as the agent of Mr. Willd in purchasing this land from you? A. Mr. Dan Tarpley." Did Mr. Dan Tarpley ever negotiate any sale of that land?

A. Tarpley and McKinley. That is what I stated awhile ago.

Q. "Did he pay you in cash or by a check on the bank? A. In cash." Did Tarpley ever pay you any cash for that land?

A. I never received a sent from Tarpley.

Q. "Where was the money paid you? A. In Albany, Oregon." Were you ever paid any money in Albany, Oregon, in connection with this transaction?

A. No money only the money Kribs gave me after I gave this affidavit.

(Testimony of Harry Saltmarsh.)

Q. That was five or ten dollars? A. Yes.

Q. "How long was it after you made your proof and paid for the land before you sold it to Mr. Willd? A. About a month." Did you ever sign any deed in regard to this land or any paper outside of Roseburg except this one?

A. Not that I can recall. [460—292]

Q. "Have you paid the mortgage of \$600 which you gave on the land? A. I have. Q. To whom did you pay it? A. 'To Mr. Kribs.'" Did you ever pay Kribs that mortgage? A. No, sir.

Q. How did you happen to answer those questions that way? A. I don't remember.

Q. How is that? A. I can't remember.

Q. Did you really answer them that way?

A. I don't remember of answering it at all. I don't remember hearing that question.

Q. Now, in regard to the payment: "Where at? A. Here in Albany." Did you ever pay Kribs any money at Albany or anywhere else? A. No, sir.

Q. (Mr. McCOURT.) I offer the mortgage to Kribs for \$600, that is the certified copy of the record, bearing date the 19th day of April, and made before John H. Shupe and H. G. McKinley, apparently in Roseburg.

Marked "Government's Exhibit 72."

Mr. McCOURT.—And deed to John A. Willd, deed purporting to have been made on the 24th day of April, 1900. H. G. McKinley and D. W. Tarpley, witnesses.

Marked "U. S. Exhibit 73."

(Testimony of Harry Saltmarsh.)

COURT.—Whom is that acknowledged before?

Mr. McCOURT.—That is acknowledged before McKinley.

Q. Do you remember that about two days after proof, two or three days after proof, of McKinley coming up there to Albany, and getting you to sign another paper?

A. No, sir, I don't remember of it.

Q. Did he ever pay you any money except the one time at [461—293] Roseburg?

A. McKinley?

Q. Yes. A. That is all.

Cross-examination.

(Questions by Mr. LIND.)

As a matter of fact, wasn't the deed signed before McKinley at Albany some time after proof was made at Roseburg?

A. I don't remember of signing any of the papers in Albany to that effect. The paper that I signed I believe was in Roseburg.

Q. You said a Northern Pacific attorney asked you to relinquish your claim. Who was that attorney? A. I think his name is Norton.

Q. Where did he call on you?

A. In Albany. He had the chief of police around there locating all the boys around one evening.

Q. He had the chief of police doing what?

A. To locate the different ones that was in Albany there. He didn't know who was who.

Q. And he came around and wanted you to relinquish?

(Testimony of Harry Saltmarsh.)

A. Yes. They wanted the claim themselves.

Q. What did you tell him?

A. What did I tell him?

Q. Yes. A. I told him that I wouldn't.

Q. Why wouldn't you?

A. Well, because I didn't want to.

Q. Well, did you want the claim yourself?

[462—294] I say, was it because you wanted the claim yourself? A. I wanted this money.

Q. What money? A. The \$75.

Q. Did he offer to pay you anything for it?

A. Who?

Q. For the relinquishment? A. Who?

Q. Norton. A. No, sir.

Q. When did you first hear that McKinley intended to raise the money for proving up by giving a mortgage?

A. That he intended to—how was that?

Q. When did you first hear that McKinley intended to raise the money to prove up these claims—your claim—by giving a mortgage?

A. I didn't know but what McKinley had the money himself. I didn't know how he was fixed, or anything else about it.

Q. When did you first hear any talk about mortgage? A. When I first met McKinley.

Q. When you first met McKinley?

A. Yes, sir.

Q. What did he say about the mortgage then?

A. He says that we can mortgage the claim and we get the money, and he says, "you can go to the

(Testimony of Harry Saltmarsh.)

claim and take it up, and it won't cost you a cent, no expenses whatever."

Q. That he would mortgage the claim to get the money? A. How is that?

Q. That he would mortgage the claim? [463—295]

A. I don't remember what he said in regards to that.

Q. Well, you said something yourself, but I could not hear you, Mr. Saltmarsh. Just a moment ago you said something about mortgaging the claim to get the money.

A. Well, that is what I said, that he would advance all this, and it would merely take a mortgage on the claim.

Q. Merely take a mortgage on the claim?

A. Yes, sir. If it was not redeemed, why, it was to be turned over to these people, or whoever took the mortgage.

Q. If the mortgage was not redeemed, if it was not paid, the mortgagee would get the land?

A. Yes, sir. In a certain length of time, I think it was three months, or something like that. I don't remember what length of time it was.

Q. If it was paid, the land would be yours?

A. Yes, sir. I had a chance to redeem it in that time.

Q. You were willing to make that arrangement?

A. Yes.

Q. When did you change your mind and conclude that you would rather have \$75 and be done with it

(Testimony of Harry Saltmarsh.)

than to take chances of paying that mortgage?

A. When did I make up my mind?

Q. When did you make up your mind that you did not care to redeem from the mortgage?

A. I don't think—

Q. You had the right—you had a right, under your arrangement with Mr. McKinley to pay off that mortgage if you wanted to, didn't you?

A. Yes, sir. [464—296]

Q. Well, when did you make up your mind that you did not care to pay the mortgage?

A. It must have been made up all the time. It was understood.

Q. What was understood?

A. That I was to receive \$75 for my right, or for the claim, and they was to pay all expenses.

Q. To pay all the expenses? A. Yes, sir.

Q. Out of that? A. Yes, sir.

Q. But if you wanted to pay the mortgage, you had a perfect right to do so, didn't you?

A. Yes.

Q. Well, when did you conclude that you did not want to pay your mortgage?

A. When did I conclude? Well, I thought I answered that.

Q. How?

A. I thought I answered that.

Q. Now, you say that Mr. Kribs gave you \$10—five or ten dollars, I don't remember which. Do you remember which it was? A. No.

Q. What did he say when he gave you that money?

(Testimony of Harry Saltmarsh.)

A. Nothing was said. He says something about "Here's for your trouble coming down here, and putting you out of your work."

Q. Had you had any talk with him before that?

A. Not in regards to that.

Q. You said he nodded his head. How do you wish us and the Court to understand that statement?

A. He would ask me—the agent would—simply ask me [465—297] a question, and if I didn't understand one way, which way to answer, why, Mr. Kribs would shake his head one way, or this the other way. That was it.

Q. Did you intentionally or knowingly answer any questions wrongfully?

A. I don't know whether I did or not.

Q. How?

A. I don't remember whether I did or not, it has been so long ago.

Q. Well, now, of course the dates and many of the things you did not remember, you had forgotten about? A. Yes, sir.

Q. And did he suggest, did he nod, when questions of that kind came up?

A. We had no conversation whatever before I went into the room—Kribs and me.

Q. How?

A. Mr. Kribs and me had no conversation whatever before I went into the room.

Q. Well, had you had any conversation with anybody else as to what you were to say? A. No.

Q. With no one?

(Testimony of Harry Saltmarsh.)

A. Not that I remember of.

Q. That is all.

Redirect Examination.

Q. Didn't McKinley tell you in substance what you should say, when you got up there?

A. No, sir.

Q. He did not?

A. He says that Mr. Kribs would be in the room there. [466—298]

Q. Did you say to McKinley that you could not remember the transaction, or details?

A. I don't remember whether I said anything like that or not.

Q. He just told you Kribs would be there. What did he say Kribs would do?

A. He didn't say.

Q. Didn't say?

A. Not that I remember of.

Q. You knew when you told that agent that you got \$900 in cash, received it in Albany, that that was not so, if you did say it?

A. If I said it, I knew it was not so. I don't remember saying it.

Witness excused. [467—299]

[**Testimony of Jay S. Phillips, for the Government.**]

JAY S. PHILLIPS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Phillips?

(Testimony of Jay S. Phillips.)

A. Salem, Oregon.

Q. How long have you lived there?

A. Well, over 30 years.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. How long have you known Horace?

A. Well, over ten years, I believe.

Q. And do you know Dan Tarpley?

A. Yes, sir.

Q. How long have you known Dan?

A. Fifteen or eighteen years—perhaps longer.

Q. You knew Dan when he used to work in the postoffice down there at Salem?

A. Yes, sir. Yes, sir.

Q. What business were you engaged in in 1900?

A. I was tending bar or in the saloon business—I don't know which.

Q. Where did you tend bar? A. Where?

Q. Whom for? Whom did you tend bar for?

A. I was with Talkington—Frank Talkington.

Q. Do you remember taking up a timber claim up in Linn County? A. Yes, sir.

Q. One of the claims involved in this case?

A. Yes, sir.

Q. Who informed you of the location of this timber claim?

A. That they had claims, you mean?

Q. Yes. [468—300]

A. Well, whether Mr. McKinley or Mr. Tarpley had spoken to me first, I couldn't say which one; but I talked with both of them about it.

(Testimony of Jay S. Phillips.)

Q. And did you mention the matter to some other persons there about that time?

A. Well, yes.

Q. Whom?

A. I think I asked Charlie Barr. I think I talked to him about going up, taking up a claim, after I found they had claims to locate with.

Q. About how many did you?

A. I think Mr. Green was the only other one I spoke to about it.

Q. John L. Green?

A. Yes. I think he was the only one.

Q. Where did you speak to him about the matter?

A. I don't remember. I might have met him on the street—I couldn't say—because he hardly ever frequents a saloon.

Q. After McKinley and Tarpley had talked with you, what did you do in connection with the entry first? What was your first act?

A. Well, I told them that—I told Dan—I was talking with Dan at that time—I told him that I hadn't the money to take the claim up. Well, he said he knew of a man that had the money to loan on timber claims, and he said he could get it. So then I told him I would take one up.

Q. And what did you do then after you had this conversation? Where did you go?

A. I don't know. I was around about my business, I guess.

Q. I mean in connection with the entry?

(Testimony of Jay S. Phillips.)

A. Oh, in connection with that. [469—301]

Q. Yes.

A. Well, from Salem we went to Albany; stayed over night there.

Q. Who was in the party, now?

A. Well, there was Mr. Green, Mr. Barr, and Mr. McKinley, I think—yes Mr. McKinley, and Tarpley, and one or two others, I think. I could not recall their names though.

Q. Charlie Burley?

A. Yes, Charlie Burley.

Q. Ed Finley?

A. Ed Finley, yes, sir.

Q. Sell Finley? A. No, sir.

Q. He was not along? A. No, sir.

Q. And after you had been out there to look at the land, what did you do?

A. We came back and went to Roseburg.

Q. The whole party? A. Yes, sir.

Q. Did McKinley and Tarpley both come back with you?

A. I am not positive about Tarpley. But McKinley, I think, came back with us.

Q. Well, what did you do at Roseburg?

A. Well, we filed on the land.

Q. Where did you stop?

A. Well, I stopped—I ate my meals at the restaurant there, and I stopped at—it was not at the hotel; it was a rooming house, across from the hotel. I don't know the name of the place.

Q. And where did you go from Roseburg, then?

(Testimony of Jay S. Phillips.)

A. Came back to Salem.

Q. With the same party—the entire party?

A. Well, no I don't believe we all came back together. [470—302] I couldn't say.

Q. Did McKinley come back?

A. I am not positive.

Q. Well, who paid your expenses on that entire trip? A. I couldn't tell you.

Q. What? A. I couldn't say.

Q. You didn't take care of that part of it?

A. I didn't take care of that, no, sir.

Q. Well, what next occurred in the matter?

A. Well, I don't know of anything occurring, any more than going on and taking it up.

Q. You went on to prove up. Now, who told you when it was time to prove up?

A. Sir?

Q. Who notified you of the time to make proof?

A. I couldn't say whether it was Tarpley or McKinley.

Q. One of them?

A. One or the other. I couldn't say which.

Q. Now, how many people were there went up when you went up to make proof?

A. Well, about the same number, I think.

Q. Who paid the expenses of that trip?

A. I couldn't tell you.

Q. Well, when you got to Roseburg, what did you do?

A. Went to the Land Office. I signed a mortgage there, and gave my note for \$600.

(Testimony of Jay S. Phillips.)

Q. What else did you do? What did you get at the time? A. I got \$75.

Q. Did you sign a deed there at that time?

A. No, sir, not as I am aware of.

Q. Did you ever sign a deed? [471—303]

A. I think I did, yes, sir.

Q. How long afterwards?

A. Now, it was either just about four months or a year. Now, which it was, I could not say, because I was at the Hot Springs for four years in succession, and I came out from the Hot Springs and signed the deed. That is, that is what I thought I came out to do. And I thought I was signing the deed when I signed it.

Q. From what hot springs?

A. Up at the Breitenbush.

Q. Where did you go to sign it? A. Sir?

Q. Where did you go to sign that instrument you thought was a deed?

A. Why, at Albany. I came down to Albany.

Q. Came down to Albany? A. Yes, sir.

Q. Whom did you sign it before?

A. Well, I couldn't say, any more than Mr. McKinley was there.

Q. What building did you go to?

A. I think it was in what they call the Revere House there.

Q. There was a fellow there with a typewriter, wasn't there?

A. I am not positive. No, I am not positive.

Q. Did you see Fred Kribs there?

(Testimony of Jay S. Phillips.)

A. I don't know whether he was in there or not.

Q. He was in Albany at the time?

A. Oh, yes.

Q. You met him there?

A. I met him in town, but I don't know as he was up there or not.

Q. Do you remember whether or not you signed a deed and a [472—304] mortgage both there in Roseburg when you got the \$75?

A. No, sir. No, sir.

Q. What? A. I didn't know I did.

Q. Didn't know you did? A. No, sir.

Q. Did you sign any in Salem?

A. Not as I remember of.

Q. Do you remember of signing any instrument before Puter? Do you know Puter?

A. Yes, sir.

Q. And Tarpley?

A. Yes, sir. But I never—not as I know of.

Q. Never signed any document before them?

A. Not before them, no, sir.

Q. They were both present there in Roseburg?

A. Yes, they were there at Roseburg. But you meant since then, didn't you?

Q. Yes, I meant after you left Roseburg.

A. Well, no. No.

Q. Well, now, did you get any more money when you signed this instrument in Albany in the Revere House?

A. I got my expenses from the Hot Springs down, yes.

(Testimony of Jay S. Phillips.)

Q. Who paid them?

A. I think McKinley give it to me.

Q. Did he pay you anything for your time?

A. No, sir. Well, the expenses and time—that is in the time—my expenses coming out.

Q. Well, now then, since you made your proof in Roseburg, you never signed any instrument in connection with this matter excepting that one up there in the Revere House?

A. Not as I remember of. [473—305]

Q. Well, you would probably remember if you did?

A. Well, I don't remember of any other at all.

Q. You understand the transaction was closed there in Roseburg? A. No, sir.

Q. When you got your \$75? A. No, sir.

Q. Oh, you didn't?

A. No, sir, I did not.

Q. Well, did you ever call on anybody to close it afterwards?

A. Sir? Well, when I went to Albany that is what I thought I was doing—I thought I was signing a deed there.

Q. You understood you had got all the money you were going to get out of it?

A. No, sir. No, sir.

Q. Why didn't you get some more money?

A. Because I couldn't sell it. I tried to sell the claim.

Q. Oh, you did? A. Yes, sir.

Q. Whom to?

(Testimony of Jay S. Phillips.)

A. The first man I tried to sell to was a man in Roseburg.

Q. Right there when you proved up?

A. Yes, sir.

Q. Whom did you try to sell to?

A. Well, sir, I forget the name, but he was from Washington. Perhaps you will get his name later. Because Mr. Green came down to where I was, and took me up and introduced me to this man, and we each tried to sell our claim to him. Yes, sir.

Q. You concluded that this \$75 from that arrangement of McKinley's and those fellows was not enough?

A. That is what I did. I thought I could make more out of it.

Q. And you and Green went out to see if you couldn't get a [474—306] little more money?

A. Yes, that is what we did. We was going to try to get more money out of it.

Q. You tried to get some of the other fellows to go in with you on it, and they would not do it?

A. Well, I don't know. We might have done that, yes.

Q. That is before you had taken the \$75, wasn't it?

A. No, sir, I believe not.

Q. Oh, you think it was after you had taken the \$75?

A. Yes, sir.

Q. You wouldn't be sure of that, though, would you?

A. Not positive, no. But most probably it was.

Q. Was McKinley in the room there at the

(Testimony of Jay S. Phillips.)

Revere House when you made those statements before that agent?

A. I am not quite positive.

Q. Who answered the questions, you or Kribs?

A. Why myself.

Q. Well, now, listen here—I will ask you if that is your signature there, and call your attention to the claimant's affidavit in Government's Exhibit 38?

A. That is it.

Q. That is your signature?

A. That is my signature.

Q. Well, now, did you tell the Special Agent this—I will let you read it if you don't think I am reading it right: "I never owned any real estate in the neighborhood of this land. I borrowed \$600 of Mr. Frederick A. Kribs to pay the Government for the land and the other expenses incident to the entry, and gave him a mortgage for ninety days at ten per cent interest on the land. The money was given me personally by Mr. Kribs, in cash, in Roseburg, Oregon, at [475—307] the time I made final proof."

A. I don't remember that.

Q. Did Kribs give you the money?

A. It was not read that way to me. No, sir. No, sir. I never handled any of the money there at all.

Q. You did not? A. No, sir.

Q. Did Kribs ever pay you any money?

A. No, sir.

Q. At any time? A. No, sir.

Q. You say Mr. Kribs was present while you

(Testimony of Jay S. Phillips.)

were making this affidavit in the Revere House?

A. I couldn't say he was present, no. That is what I say.

Q. You know he was in Albany?

A. He was in Albany, yes.

Q. Did you since pay Mr. Kribs the amount?

A. No, sir. That was not in anything. No, sir, I don't remember of anything of that kind.

Q. "I have sold the land to Mr. John A. Willd for \$850." Did you say that?

A. Not as I remember of, no, sir.

Q. If you did say it, you could not think you were selling the land at that time, or deeding the land, could you? A. No, sir. No, sir.

Q. "Out of that sum I paid the mortgage of \$600 to Mr. Kribs."

A. I don't remember of ever anything like that coming in at all in my signature.

Q. Well, that is about all there is in this thing.

A. Well, I don't remember a thing about that, no, sir.

Q. "The purchase price of the land was paid me at Salem, Oregon, in cash." A. No, sir.

[476—308]

Q. "I owned the land a month or a little over before selling it." A. No, sir.

Q. Did you answer that way?

A. I don't remember any of that. No, sir, I do not.

Q. "I sold the land because I had other business that I wanted to look after, and I was not sure that I would have the money to pay off the mortgage when

(Testimony of Jay S. Phillips.)

it became due.

A. I don't remember any of that. No, sir, I do not."

Q. Well, that is your signature there, isn't it?

A. That is my signature, yes, sir.

Q. And this part of it must have been written out at least before you could have got your signature on?

A. It must have been, yes. It must have been. But I don't remember it at all. No, sir, I do not.

Q. Well, your recollection of the facts was as clear then as it is now? A. How?

Q. Your recollection of the facts was as clear then as it is now?

A. Of the facts, yes, as far as I know. But I don't remember.

Q. This statement was not true at all, that I have been reading to you? A. Sir?

Q. The statement I have been reading to you was not true at all?

A. Well, I don't remember anything of that kind, no, sir.

Q. Well, I say, it is not true, if you did remember?

A. No, it would not be. No, sir; no, sir.

Q. Sure not? [477—309]

A. I don't remember that at all.

Q. I think that will be all.

Mr. McCOURT.—I might want to ask him a further question.

(Examination by the COURT.)

Q. From whom did you understand you were

(Testimony of Jay S. Phillips.)

coming down to Albany to sign a deed?

A. I understood Mr. McKinley to say that. I understood him to say when I came down he wanted me to sign the deed.

Q. You did sign it in the Revere House?

A. I think it was in the Revere Hotel.

Q. Was the instrument read to you that you signed?

A. I could not say now.

Recess taken until 2 P. M. [478—310]

Portland, Oregon, April 21, 1910, 2 P. M.

JAY S. PHILLIPS resumes the stand.

Mr. McCOURT.—I want to introduce the mortgage and deed of Phillips to Kribs and Willd respectively.

Phillips Mortgage marked "U. S. Exhibit 74."

Phillips Deed marked "U. S. Exhibit 75."

Cross-examination.

(Questions by Mr. LIND.)

Mr. Phillips, if I understood your evidence correctly, you said you have no recollection of signing a deed until some months later?

A. Yes, sir.

Q. Now, what you refer to as signing somewhat later, may that not have been the affidavit which you identified?

A. What say?

Q. What you referred to as signing later, may that not be the affidavit?

A. Well, it might have been, but I thought it was a deed at the time, yes, sir.

Q. You said that you and a gentleman by the name of Green tried to sell your claims at Roseburg on the day of final proof?

A. Yes, sir.

Q. Is he one—was he one of the parties who had

(Testimony of Jay S. Phillips.)

entered the lands at the time you did?

A. No, sir. No, sir.

Q. Did he have any timber claim himself?

A. Not as I know of. He was a stranger to me.

COURT.—I don't think that the witness understood the question. He is referring to the man he offered to sell to. [479—311]

Q. I meant Green, the man who—

A. Oh, Green, yes, yes; he had a claim; oh, yes.

Q. He had a claim? A. Yes, sir.

Q. What conversation did you have with Green in regard to selling your claims, if you recall?

A. Well, the only conversation I remember is that I told him—I said, “We ought to sell these for more money than that, than we are getting”; and he said, “If we find a buyer, why, we will sell.” So it happened while he was up town he found some gentleman—I don't know who; he introduced me to him, but I forgot his name. He came down and said, “We have got a gentleman to sell our claims.” He says, “Let's go up and have a talk with him.” We went up and he did not offer us anything that we would take.

Q. When did you conclude to let your claim go?

A. Well, right from the start, I felt as though I would let mine go if I could get more out of it.

Q. No, I mean let it be sold to Willd. When did you conclude that Puter or McKinley might sell it?

A. Well, now, after I found that I could not sell it, why, I said I will just turn it over. I believe it was about the time the note came due. I wanted to get my note back.

(Testimony of Jay S. Phillips.)

Q. Did you have the right to sell your claim at any time that you wanted to?

A. I had; that is, through Mr. Tarpley. He told me that I could sell at any time that I got more—at any time that I wanted to sell, he said that I had a right to sell it. And he was the man that located me, so I just took his word for it.

Redirect Examination.

Q. Did you understand Green had agreed to or was going to get [480—312] \$75 from McKinley too?

A. I never knew what Mr. Green was going to get, no, sir.

Q. Did he state to you he thought he was not getting enough?

A. He did—did not tell me how much he was getting. He said we was not getting enough; or rather, we can make more out of this claim.

Q. You had not talked to McKinley or Tarpley up to that time about how much you were going to get—after the first time?

A. I had talked with McKinley and Tarpley, yes.

Q. Before you went to file on it?

A. Certainly I did.

Q. They said you would get \$75? A. Yes.

Q. You did not talk any more until you proved up that day and went out to see if you could get any more? A. I did, yes.

Q. After you had sold, what were you going to give them?

A. After I had sold it I would not give them anything.

(Testimony of Jay S. Phillips.)

Q. Nothing at all? A. No, sir.

Q. You would have become—

A. I would went and paid my note off, yes.

Q. But you didn't have any note then. That is before you gave the note. When you made the note you went and took your \$75?

A. Why, I got my \$75, but I understood I had the claim right in my possession until I went down to Albany, and I thought that is where I signed the deed.

Q. Who did you ever try to sell it to after you left Roseburg? A. Different ones.

Q. Who?

A. I don't remember the names. Different ones.

[481—313]

Q. Well, can you name a single man?

A. No name, I couldn't; don't remember; but around the saloon there would ask different ones—business men, if they wanted to buy a timber claim.

Q. After you made proof and came back from Roseburg? A. Yes.

Q. Notwithstanding you signed a deed there?

A. I didn't know I signed a deed there.

Q. You got the \$75? A. Yes.

Q. That they agreed to pay you?

A. Yes, sir, I did.

Q. And you had not agreed to pay them anything? A. No, sir.

Q. Not a thing?

A. No, sir, only the interest on the money.

Q. They were going to all that trouble, taking you to the land, taking you to Roseburg twice, pay-

(Testimony of Jay S. Phillips.)

ing your hotel bill, looking after your claim, and were to get only the interest on the money.

A. Interest, and didn't Mr. Tarpley make \$100 to locate me?

Q. Did you ever pay the \$100?

A. It was in the note, wasn't it?

Q. Did you think it was? A. I did.

Q. Did they figure up any expenses you had been to? A. They did.

Q. What did they figure up?

A. They called it \$25.

Q. What?

A. They called it \$25. Other expenses beside the locating and the \$75 he gave us and then the \$25 for railroad expenses and that made the note \$200.

Q. What about his expenses?

A. I mean \$600. [482—314]

Q. What about their expenses?

A. They did not say anything about that.

Q. What about the Land Office fees?

A. That was supposed to all be paid. That was in that \$400. That is the way I thought it was.

Q. That is the way you think it is now?

A. No, sir, that is the way I thought at the start.

Q. What did you think when you answered in that affidavit that you got \$850 for that?

A. I don't remember that—

Q. Don't know anything about that?

A. No, sir, I do not.

Q. What did that man offer you and Green for the land?

A. I don't remember now the amount, but there

(Testimony of Jay S. Phillips.)

wasn't enough in it for us to let it go. I don't remember the amount.

Q. So you let it go to Tarpley and McKinley?

A. I let it go more because I wanted to get my note back, because it was due and the mortgage due.

Q. You signed a deed the same day as the mortgage?
A. I didn't know that.

Q. When did you ever have any discussion with them about letting it go after that?

A. It was when I came down from the Hot Springs. I came down then and the time was up for—the note was due, and I came down to turn the property over because I couldn't get it out. That was just the way I felt about it.

Q. How long did you say that was after you—

A. I can't remember now. As I said to you before, I didn't know whether it was four months after or three, or whether it was a year after.

Q. Over a year, wasn't it?

A. I could not say positive, because I know I was at the [483—315] Hot Springs three or four years. I came out from the Hot Springs to sign what I thought was the deed.

Q. What made you think it was a deed, and you had sold it to John A. Willd?

A. Perhaps they did not read that to me, I don't know.

Q. Who talked to you about it?

A. Nobody lately.

Q. Before?

A. Only I met McKinley and he sent for me to

(Testimony of Jay S. Phillips.)

come down and sign the deed there.

Q. Did he go along when you signed the deed?

A. He was up there, but whether he went in—I guess he was in the room, yes, I am not positive.

Q. Did you think that was Willd you were signing it to there—the typewriter?

A. I did not know anything about that. I am not versed in law or in business affairs of that kind.

Q. Who did you think you were transferring it to at Albany?

A. Just transferring it back to Kribs. That is who I thought I was transferring it to, because the note was in his favor.

Q. What did you tell this man Willd?

A. I don't know. I don't remember that I told him anything.

Q. Did you see Kribs down there at Roseburg?

A. Roseburg—I believe I did, yes.

Q. Talked to him?

A. Well, yes, I talked to him a little, I guess. Met him there—had an introduction to him.

Q. Who introduced you to him?

A. I could not say—McKinley or Tarpley or some of those boys that were acquainted with him. I could not say which. [484—316]

Q. Now, you name a business man in Salem that you ever asked to buy a timber claim?

A. F. P. Talkington.

Q. Who else? A. I can't name.

Q. He ran the saloon you kept there?

A. He did.

(Testimony of Jay S. Phillips.)

Q. When did you speak to him about it?

A. Before the note was due.

Q. Did you ever get that note back?

A. I did.

Q. Have you got it now? A. Yes, sir.

Q. Now, when did you get it back?

A. I could not tell you the date.

Q. Who gave it to you?

A. I could not tell you now. I don't remember.

Q. Where did you get it? Where was it given to you?

A. I was under the impression—now, for sure, I could not say, but under the impression that I got that at Albany at the time I came down.

Q. Yes?

A. Yes, sir, I am under the impression that I got it there, but not positively, because I know I made a trip back down to Salem, and I thought I took that note and pasted it in my sticker at home.

Q. You had it in a sticker there?

A. I have had. You can see it there.

Q. Wasn't that note handed back to you the very day it was made?

A. Not as I remember, no, sir.

Q. Who did you give it to?

A. I don't remember that, only to Kribs. It was made out in his favor. I signed the note because it was there for me to sign, and then I had a mortgage too, and I gave them [485—317] a note for security.

Q. And you didn't sign a deed any time later?

(Testimony of Jay S. Phillips.)

A. Well, I thought I signed the deed in Albany, as I tell you.

Q. Well, if you signed one—signed before—it was taken from you without your knowledge?

A. I didn't know anything about that. Didn't know anything about that, no, sir.

Q. Will you state now on the stand that you didn't get that note until the time you went down to Albany? A. I will not.

Q. What? A. I will not state that.

Q. If you didn't get it that time, what other time did you ever see anybody to give it to you?

A. I could not tell. I thought I got it at that time; I would not say I did.

Mr. McCOURT.—I offer the note in connection with the mortgage.

Marked "U. S. Exhibit 76."

Q. Before you made a filing at all, you understood there would be \$75 in the deal?

A. I did, sir.

Q. And you didn't put up a cent of money?

A. No, sir.

Q. And you didn't take a step except McKinley and Tarpley told you to until you made the proof?

A. Yes, I walked around. I didn't take anybody's advice, no.

Q. I mean in regard to the transaction?

A. No, sir.

Q. They attended to the whole thing?

A. They attended to that part, yes. [486—318]

Q. And as soon as you got through the proof you

(Testimony of Jay S. Phillips.)

got the \$75?

A. I got the \$75, yes, sir.

Q. And went away from Roseburg and heard no more from the transaction until Mr. McKinley sent for you at Albany?

A. No, I don't believe I did. I might:

Q. Never made any further inquiry about the matter?

A. No. Not necessary, any more than just trying to get rid of it. I wanted to make some money out of it.

Q. How much did you offer it to Talkington for?

A. I would have sold it for seven or eight hundred dollars.

Q. Yes? A. Yes, sir.

Q. Did you know that the mortgage was for ninety days? A. Yes, sir.

Q. Did you ever make any inquiry—did anybody ever demand payment of you, of it?

A. No, not then, no.

Q. Nor at any other time?

A. That is what I thought I went down to Albany for.

Q. Who called you up at the Hot Springs?

A. Mr. McKinley.

Q. Where from?

A. Well, he says—I could not tell you where from, but he says, “Meet me in Albany,” he says, “I want to see you.” He sent a telegram out to Detroit, then a boy brought it *out* horseback to the springs.

Q. That telegram did not say anything about a deed, did it? A. Telegram? No, no.

(Testimony of Jay S. Phillips.)

Q. No? A. No, sir. No. Just come out.

Q. You didn't know what you were coming down to Albany for?

A. I did not at the time.

Q. Until you got there? [487—319]

A. After I got there I met McKinley and I understood him to say he wanted me to sign a deed, so I went up to the hotel and signed what I thought was a deed.

Q. Did he accompany you up to the hotel?

A. I believe he did, yes.

Q. Do you remember whether Kribs was in there?

A. I could not say, couldn't say.

Q. Was anybody there besides the man who took the instrument?

A. One man was there—might have been—I know one little fellow in there besides Mac.

Witness excused. [488—320]

**[Testimony of Charles Pfeiffer, for the
Government.]**

CHARLES PFEIFFER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Mr. McCOURT.—It is agreed that the register of the Revere House at Albany, Oregon, shows Fred A. Kribs, wife and two sons, Minneapolis, registered at that hotel on April 1, 1900, and on the same day the said register shows H. G. McKinley of LaCrosse, Wisconsin, registered there.

Mr. LIND.—That is the same McKinley here in Portland?

(Testimony of Charles Pfeiffer.)

Mr. McCOURT.—Yes, this same register of April 2d, shows S. A. D. Puter, Portland, Oregon, registered at the Revere House.

April 5th, the register shows B. H. Wagner of Salem, Oregon, being the Basil H. Wagner, a witness heretofore called on this case.

On April 7, 1900, the register of that hotel shows Dan Tarpley of Salem, Oregon, H. G. McKinley of LaCrosse, Wisconsin, and B. H. Wagner of Salem Oregon, as being registered at the hotel.

April 9, 1900, shows E. D. Stratford registered at that hotel, and also the said H. G. McKinley and Dan Tarpley.

April 10th, the register shows D. W. Tarpley, Jay Phillips, Charles Barr, Charles Burley, Ed Finley, Sell Finley and L. Green, and the register shows an entry charge to McKinley, bed and breakfast for all the parties mentioned.

April 13th, the register shows Horace McKinley, John Green, Charles Burley, Ed Finley, Sell Finley, Jay Phillips; charged to "McK." one meal.

April 15th, the register shows D. W. Tarpley and Horace [489—321] McKinley registered at that hotel.

April 16, 1900, the register shows J. J. Jaggy, W. J. Drinker, J. F. Whitney, C. E. Moulton, Edwin Mays and wife, S. A. D. Puter, B. H. Wagner.

April 21st, Fred A. Kribs and family, Rufus Drum.

April 22d, Horace McKinley.

April 23d, S. A. D. Puter.

April 24th, Horace McKinley and D. W. Tarpley.

(Testimony of Charles Pfeiffer.)

May 18th, the register shows Fred Kribs and H. H. Davis of Minneapolis in Mr. Kribs' handwriting.

May 20th, the register shows C. A. Smith, H. H. Davis, S. A. D. Puter, F. A. Kribs, all in the handwriting of Mr. Kribs. The register also shows upon that date William F. Mealey, Foster, Oregon.

The register of the Revere House further shows Fred A. Kribs registered July 10, 1901, and on July 11th, the register shows E. D. Stratford, C. W. Stratford, H. G. McKinley, J. C. Stratford.

Sunday, November 3, 1901, shows J. VanZant—Mr. VanZant's name will appear later.

Monday, November 4, 1901, E. D. Stratford of Roseburg.

November 9, 1901, E. D. Stratford, O. J. Mealey, J. VanZant.

The matters read into the record may be considered as evidence without introducing the books?

Mr. LIND.—Certainly.

Mr. McCOURT.—If the Court please, I desire to have an examination of the room book that Mr. Pfeiffer has in connection with the first visit of Mr. Kribs and Mr. Smith at the hotel. It will not be necessary to have Mr. Pfeiffer here to identify it. This room book will show how long [490—322] the parties stayed after they registered. The register does not show how long they remained.

Mr. LIND.—What do you claim?

Mr. McCOURT.—I don't know what it does show.

Mr. GEARIN.—That is all right. Let him send it down.

Witness excused. [491—323]

[**Testimony of Horace G. McKinley, for the Government.**]

HORACE G. McKINLEY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

How old are you, Mr. McKinley?

A. Forty years.

Q. How long have you been in Oregon?

A. Twenty years.

Q. What has been your business since you came to Oregon?

A. Land business—dealing in lands.

Q. Buying and selling land for eastern connections, or eastern people, rather?

A. Yes, and myself.

Q. Been engaged in that business ever since you have been here, for the past twenty years?

A. Off and on.

Q. Well, when were you off?

A. Well, I was off for a couple of years a little while ago.

Q. What you doing during that time?

Mr. LIND.—Is it material in this case?

Mr. McCOURT.—I believe not. I will not press it. It might be. It isn't material to this Court, but it might be to present a record to the Appellate Court, if it ever went there.

Mr. LIND.—I don't think you ought to.

COURT.—It is not at this stage of the case.

(Testimony of Horace G. McKinley.)

Q. You know S. A. D. Puter? A. Yes, sir.

Q. How is that? A. Yes, sir.

Mr. LIND.—Speak a little louder, will you?

Q. And Dan W. Tarpley?

A. Yes, sir. [492—324]

Q. When did you first commence to do business with Mr. Puter in the land business? A. 1892.

Q. And how long did you continue to have transactions—land transactions with him?

A. Until 1905, at different times.

Q. Were your land transactions largely in connection with public land?

A. Both state and Government.

Q. But the lands which you were accustomed to deal in as you became connected with them were either State lands or Government lands?

A. Well, not entirely.

Q. Well, that was the bulk of it?

A. No, I can't say as it was.

Q. What?

A. I have secured options from different people that had lands, and resold those and dealt that way too.

Q. When did you first become connected with the tract of land in controversy in this case?

A. With that—with the particular pieces that are in controversy, in January, 1900.

Q. Tell the Court the circumstances under which you became connected with these lands.

A. I was stopping at Albany at the Revere House and I think it was January 4th of that year that Mr. Mealey came down to the hotel there and he informed

(Testimony of Horace G. McKinley.)

me that he knew of a fine bunch of timber situated up on the Santiam River. He asked me if I could handle it, and I asked him if he could give me the numbers. He said that if I could handle it, that he would for \$10 a quarter section. I went over [493—325] the matter with him a little bit; asked him about the topography of the country there, the river, etc., and asked him for a little time to consider it; and he then told me that the Northern Pacific had a lot of fellows in there and that if I intended to do anything with it, that I would have to hurry. So I told him that I would let him know in the morning, and Mr. Tarpley was with me at the time. I talked the matter over with him a little bit, and finally I concluded that I would go down and see Mr. Puter who I knew was then in Portland. And I told Mr. Mealey, I says, "I will think the matter over and I will let you know in two or three days." He told me that I would have to hurry about it, again, as the Northern Pacific were sending out lists every few days to the Land Office at Roseburg there and the particular tracts that he knew of would perhaps be taken in a short time. So I told him I would come to Portland and return in a day or two. I did. I came down and had a talk with Mr. Puter about it and we had a long talk, as to how would be the best way of handling it. Whether to try and find some one that would scrip it, but we thought that would take too long, and we couldn't do it; and finally we discussed the proposition of locating people on it and making what we could out of it that way, and finally decided that was the best way, and I returned to Albany. I

(Testimony of Horace G. McKinley.)

telephoned Mr. Mealey to come down. He arrived. I had Mr. Puter down from Portland and we secured the data that we wanted from Mealey and signed a contract to pay him \$40 a section for ten sections. This money to be paid at the time that we located any parties on the land. And that was the beginning of the—do you want me to go on further to the finish?

Q. About what date was that?

A. I will refer to my book here if you want to know the [494—326] exact date.

Q. Yes, refer to the book.

A. I think it was, according to this it was January 4th, Mr. Mealey came down. I went to Portland on the morning train of the 5th; I returned to Albany on the evening train of the 6th. I telephoned to Mealey the 7th. Mr. Mealey came out. On the 8th Mr. Puter came down from Portland; we signed a contract with Mealey to furnish ten sections.

Q. Did you have any land in there or control any at that time? A. Yes, sir.

Q. How much?

A. I had about 30 quarter sections.

Q. In these same townships?

A. Well, I wouldn't—wait a minutes, let's see. I possibly had 20 quarter sections in these townships.

Q. School lands?

A. Yes. I had other interests in some other land in 14—1 there, in a way.

Q. What date did you say that was, now?

A. What date?

Q. That last date there when you and Puter—

(Testimony of Horace G. McKinley.)

COURT.—January 8th.

A. The 8th of January.

Q. 8th of January, all right. How long was it before you filed anybody upon the land?

A. Thursday, the 18th of January.

Q. Who filed upon this day and how many—that day?

A. Seven.

Q. Do you recall who they were?

A. I have the names here. [495—327]

Q. Did you put the names there at the time you made that entry?

A. Yes, sir.

COURT.—18th or 19th?

A. I have it the 18th here. No, no, it would be the 19th. I left on the evening train for Roseburg with those parties.

Q. Who were they?

A. Brady—why, Clel Nash; we called him Brady—Nash—Cleb Nash; Frank Starr, Bas Wagner, Lee, Lerwill, Barr, Drinker—seven.

Q. Where did you leave with that—what place did you leave?

A. Well, I think some of them got on at Albany and some at Halsey and some at Salem.

Q. Where were you? Where did you take the train?

A. I have it here that I was at Salem.

Q. And did Puter and some more file at that same time?

A. I haven't that down here; I don't know.

Q. Well, now, don't you remember, as a matter of fact, that Puter filed with the first bunch there—Puter and his wife and some more of his relations?

(Testimony of Horace G. McKinley.)

A. I guess the records show. I don't remember when it was. I know they filed right at first.

Q. Right after you filed the first lot of people what became of Puter?

A. To the best of my recollection Puter went east.

Q. Do you remember how long he was gone?

A. I think he returned along about the—between the 20th and 25th of February.

Q. Returned to Albany?

A. Returned to the coast here, yes.

Q. Well, now, in the meantime, did anybody else file while [496—328] Puter was gone?

A. Yes, sir.

Q. State the dates that you have there, the persons filing, and who they were.

A. Saturday, the 20th of January, Z. Smith, Walter Boone, Jennings Whitney, J. J. Jaggy, Charles Smith, A-r-c-h-a-m-b-e-a-u, is his last name; B-r-o-c-h-e-t-t-e, that is his last name, and Neal Dozier. That is all on that date. Monday, the 22d, Thomas Wilson, Anthony Thomas, and Enos Conn. The 23d, H. G. Meyer, Carrie Meyer, Miss Lind; H. C. Barr, Brandeberry, and Mr. Farrell. 30th, Jay Phillips, "Finley Brothers," I have it here, Burley, Drum, and Barr. Well, they went down on the 30th. They filed on the 31st. February 1st, Saltmarsh; I have it here Plankington, it is Pilkington; and Adkison, The others—there were 16 parties went down Monday, February 20th, but I haven't the names here; I don't know who they were.

Q. February 20th?

A. I think that was all—on February 26th.

(Testimony of Horace G. McKinley.)

Q. Now, then, you haven't the names of the February 26th? A. No, sir.

Q. How many were there?

A. I have here 16 parties; "Filed 16 parties."

Q. That was the last date you filed anybody?

A. I think it was; yes, sir.

Q. Now, in the meantime did you have any communication with Puter? A. Considerable.

Q. Have you got the letters you received from Puter? A. I have two of them here.

Q. Have you any copies of the letters that you sent him? A. I can't say. [497—329]

Q. Have you looked? A. Yes, sir.

Q. Been able to find them?

A. No, I have not been able to find them. I haven't looked very thoroughly for copy. I haven't went over everything I have.

Q. Do you know whether or not you have all the letters or have them accessible that you received from Puter— A. I have them all.

Q. — during that time?

A. I am quite certain I have them all. That is, I have had them all, I haven't got them now.

Q. Well, you gave them all to me, but those three.

A. Two.

Q. Well, you have three there.

A. Well, three, whatever there was.

Q. I will ask you to examine the bunch of letters which I hand you and state whether or not they are the Puter letters mentioned, that you received between—or after these filings mentioned, from Puter?

(Testimony of Horace G. McKinley.)

A. Yes, sir, I received all those letters from Mr. Puter.

Q. Did you receive them in the regular course of the mail from the point at which they were written?

A. I did.

Q. Did you, during the same interval, receive the telegrams from Mr. Puter which I hand you?

A. Yes, sir.

Q. Those other three letters you mentioned; have you those in your pocket?

A. No, I haven't got them. I didn't put them in my pocket.

Q. What?

A. No, I left them at the room. I changed my clothes and [498—330] left them at home. I will send over for them.

Q. I think maybe we had better have those and introduce the whole bunch together as the correspondence in the case. Can you send some one for them?

A. I don't know as I could say just where they were over there, unless I go myself.

Mr. McCOURT.—I will excuse the witness, if you wish and call another witness while you run and get them.

Mr. LIND.—Also put those letters and telegrams in chronological order. That will be a great help.

Mr. McCOURT.—Do you want to put the envelopes with them?

Mr. LIND.—I examined those letters; went over them, and some of them are dated without month. It was necessary to consult the envelope, and McKin-

(Testimony of Clel Nash.)

ley can do that better than anybody. Of course, I consulted him in regard to those.

Witness excused temporarily. [499—331]

[**Testimony of Clel Nash, for the Government.**]

CLEL NASH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Nash?

A. I am living at Balston, Oregon, at the present.

Q. Where? A. Balston.

Q. What are you doing now?

A. I am working on a hop ranch.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Dan Tarpley? A. Yes, sir.

Q. Did you know these people in the early part of 1900, and prior to that? A. Yes, sir.

Q. What was your business then, Clel?

A. I was tending bar for Mel Hamilton.

Q. How long had you been engaged in that business? A. I worked for him since 1894.

Q. How is that?

A. I worked for him from 1894 until after that.

Q. When you—do you remember the matter of a timber claim transaction that you and McKinley and Tarpley had there in 1900? A. Yes.

Q. Which one of them talked to you about it?

Mr. LIND.—This does not concern, as I understand it, one of the claims in the suit, consequently

(Testimony of Clel Nash.)

we object to it as irrelevant in this case, and incompetent for the purpose of establishing any issue in this case, and also, bearing [500—332] in mind the suggestion of the Court, I would inquire of the District Attorney and the Court whether, in view of the fact of the large number of entries involved in this suit, it would not appear as though there was quite enough to characterize and color the transaction without going outside. The only possible excuse for evidence of this character might be to characterize the transaction as a whole, and where the transaction involved at bar is so extensive as here, it seems as if there might be enough color in it without going outside of the record. It is my best judgment this evidence is not admissible.

COURT.—I think it probably competent for the purpose of tending to show fraud in the original inception of this enterprise. I suppose that is why he offers it. I shall allow it to be admitted, subject to your objection and exception.

Q. Who spoke to you about it?

A. Well, Bas Wagner and myself and Frank Starr and McKinley spoke to me.

Q. Those are the people that were down there?

A. Yes, sir.

Q. But who was it spoke to you about taking a timber claim before you started at all?

A. I heard Frank Starr saying something about we could make a little money.

Mr. LIND.—I cannot hear the witness.

A. Well, that we could make a little money by going out and taking up a claim, for I hadn't never

(Testimony of Clel Nash.)

expected to use the claim myself, or live on it, and he said we could make probably a little money, so I consented to go to [501—333] Roseburg to take up this.

Mr. LIND.—Who stated this to the witness?

A. Frank Starr.

COURT.—Starr.

Q. Did you have any conversation with Horace McKinley? A. Yes.

Q. What did Mr. McKinley tell you?

A. Well, he said a chance to make a little money.

Q. How much money? Did he tell you?

A. Well, he didn't exactly tell me. Somewheres in the neighborhood of \$50.00 and expenses.

Q. Well, did you go to Roseburg?

A. Yes, sir.

Q. And where did you go when you went to Roseburg? A. I went to a hotel.

Q. Who paid your expenses?

A. Well, I guess McKinley or Puter or some of them.

Q. Well, did you go to the Land Office?

A. Yes, sir.

Q. Who was there when you got there, of this party? A. Well, there was Frank Starr—

Mr. LIND.—Is it necessary to repeat all that?

Q. There were several people there?

A. Yes, sir.

Q. Was any of the officers of the Land Office there?

A. Why, I think so. They gave me a blank to read over and I read it over, where I had to swear

(Testimony of Clel Nash.)

that I had been on the land and it was fit for nothing but timber—I didn't file.

Q. I invite your attention to a blank, or, rather, to a Timber and Stone Sworn Statement here, and ask you whether that is the blank that you read over preparatory to [502—334] signing same.

A. That is a blank similar.

Q. That is the form that you read?

A. The form that I read; yes, sir.

Q. When you read it, what did you do?

A. I didn't sign it; I didn't file.

Q. What? A. I didn't file.

Q. What did you do?

A. I told them that I didn't want to swear that I had been on a place where I hadn't been and so I didn't file. I came home.

Q. Did you say anything to him about the contract that they talked about in there?

A. Well, I didn't know what the contract was, until I read it.

Q. I mean, did you say anything to the people that were there about saying that you hadn't made a contract to sell the land to anybody?

Mr. LIND.—Objected to as irrelevant, incompetent, hearsay.

COURT.—It would depend on who he had the conversation with.

Q. These same people that went there with you were there?

A. Well, I told Frank Starr that I lived too close to a brick house.

(Testimony of Clel Nash.)

Mr. LIND.—I ask that that be stricken out as hearsay.

COURT.—Was it McKinley or some of these people?

Q. Was McKinley and Puter—yes, McKinley—there when you said that?

A. I am not sure he was.

Q. Bas Wagner? A. I think so. [503—335]

Q. Tarpley?

A. I don't know that he was. I spoke to Tarpley up at the hotel.

Mr. LIND.—To shorten the record, might not that be stricken out?

Mr. McCOURT.—It shows a forty dollar agreement, to begin with.

Mr. LIND.—There is no evidence of any agreement.

Mr. McCOURT.—He said McKinley said there would be forty or fifty dollars in it.

Mr. LIND.—There might be he said.

COURT.—That part, if in the testimony, might stand, but his statement as to what he said to these people at Roseburg about a contract and about a brick house can be stricken out of the record.

Witness excused. [504—336]

[**Testimony of John Harrison, for the Government
(Recalled).**]

JOHN HARRISON, a witness recalled on behalf of the Government, testified as follows: .

Direct Examination.

(Questions by Mr. McCOURT.)

Now, Mr. Harrison, what business were you engaged in in 1900 when you made the timber and stone entry on the lands involved in this case?

A. I was working at that time just at general work.

Q. General work? A. Of any kind.

Q. And who spoke to you first about taking a timber claim? A. Mr. McKinley.

Q. Personally? A. Sir?

Q. Spoke to you in person there?

A. I think I spoke to him myself.

Q. Where at? A. Brownsville.

Q. What?

A. Brownsville. I would like to get a claim.

Q. And who else did you see, then, afterwards, about it?

A. Well, we went on and he said, "All right," or something, "we run on them sometime," and I don't know as I seen anyone. He phoned to me afterwards that there was seven claims up above Mealey's that we could get, and I might see some of the rest of the party—boys—and if we wanted them, "Now is the chance to get them." Something of that.

Q. Now, who did you see?

A. Well, I told him I would—I would call him up again in a short time, maybe half an hour, or an

(Testimony of John Harrison.)

hour. I seen Mr. Blakely, Henry Blakely. [505—
337]

Q. Who else?

A. That was all, only my boy. Mr. Blakely selected, excepting myself.

Q. Since that time what have you been doing?

A. What have I been doing?

Q. Yes.

A. Well, I have done a little of everything. I am a painter by trade.

Q. Where have you worked at the painting business?

A. Brownsville.

Q. Working at that now? A. Yes, sir.

Q. Ever work for F. A. Kribs?

A. Yes, sir.

Q. How long?

A. I worked all one Summer, and off and on during the next year, but not steady. One Summer steady.

Q. What doing?

A. Running a compass, mostly.

Q. Cruising timber?

A. Well, I run a compass. Not exactly I wasn't their cruiser—I wasn't their chief cruiser, but I run a compass.

Q. Well, then, after you had seen Mr. Blakely there, what did you and Blakely and those other people do?

A. Well, we got ready right straight and went up to Mr. Mealey's; from there we went on to the claims.

Q. Did you see Mr. Tarpley or McKinley or

(Testimony of John Harrison.)

Mealey? A. Mr. Tarpley.

Q. Who took you up there?

A. From Mealey's, Mr. Tarpley. We went to Mealey's ourselves.

Q. You took Mr. Blakely's conveyance to Mealey's? [506—338] A. What?

A. You took Mr. Blakely's conveyance to Mealey's?

A. His team, I think. I think we hired a hack. I would not say for sure. I think we went together.

Q. After you had seen the claim, what did you do?

A. Came back to Mealey's, stayed that night, then back to Brownsville, then went to Roseburg and filed.

Q. And how long after that was it you went back to Roseburg?

A. Well, I could not just state the time. The length of time *it taken* for publication.

Q. Who notified you it was time for you to prove up and to go to Roseburg?

A. I could not say as to that. I think *we taken* it from the paper.

Q. How is that?

A. It was in the paper, the home paper there. It was published, but I would not say whether I was notified at all only through the paper.

Q. Where did you meet Mr. McKinley as you went back to Roseburg?

A. Met him on the train going to Roseburg.

Q. Who paid your fare?

A. McKinley, I suppose.

Q. Had you an understanding prior to that that he would pay your fare, or take care of the matter?

(Testimony of John Harrison.)

A. Not exactly. He said that—when he phoned to us he says that “The claims are there and if you want them—” I believe I asked him how much there was in it, or how much I could make out of it. He said there was \$75.00 in it and he didn’t know how much more or anything about. [507—339] He says, “Whatever you can make out of it, but,” he says, “there was \$75.00 above expenses and Government price of the land.

Q. Now, when you got down to Roseburg there and made proof—

A. Sir?

Q. You made proof—when you went to Roseburg and made proof you went with the people Mr. Blakely spoke of yesterday?

A. Yes, sir; there was seven.

Q. When you got through making proof what did you do?

A. Well, after we made proof, why, Mr. McKinley and us—whether all the crowd or a part of it, but the biggest part of us, at least, seen Mr. McKinley—we went to a room and he said he would get the money, or raise the money—he would fix it where we could get the money. We got it. Well, I don’t say as we got the money, but we gave our notes there and secured the parties, and the Government price was paid on it, the *the* expenses, I suppose, and the location fees.

Q. Mr. Kribs was there, was he?

A. I could not say for sure. I didn’t know Mr. Kribs at that time. He might have been there. I could not say.

Q. And when you signed that note, how much

(Testimony of John Harrison.)

money did you get?

A. Well, afterwards I got—I could not say just exact, but \$75.00 and something over for expenses going above, and so forth, that we paid out ourselves.

Q. What was the matter of expenses there? I didn't catch that. [508—340]

A. I could not say what they was. Whatever it was, that was counted in.

Q. How much did Mr. McKinley pay you for getting the other people there?

A. Pay me for getting the other people?

Q. Yes. A. He didn't pay me anything.

Q. That mortgage was signed the same time you made proof? A. Yes, sir.

Q. Who did you mortgage the land to?

A. I could not say exactly, but I think the note was given to Mr. Kribs. That was the name, I am pretty sure.

Q. Well, did you ever get any money out of it?

A. Not after that. After that settlement, no, sir.

Q. What?

A. Not after that settlement, no, sir.

Q. Well, you deeded the land then and there?

A. No, sir.

Q. When did you deed it?

A. Afterwards, after I got home.

Q. About how long?

A. Well, it wasn't long. I could not say just how long, but a short time afterward.

Q. About three or four days?

A. Probably.

Q. Who came to get the deed?

(Testimony of John Harrison.)

A. I think it was Mr. Tarpley, if I remember right.

Q. Was your wife in Roseburg?

A. No, sir.

Q. How many acres was there in your claim?

A. Sir? [509—341]

Q. How many acres were there in your claim?

A. 160, I suppose.

Q. Did you ever figure up or did Mr. McKinley figure up with you what the expenses had been and all about the claim?

A. Well, I couldn't say as to that. It has been so long ago, but there was an estimate made of it of some kind just our trip up to Mr. Mealey's and back there to Brownsville.

Q. You had your trip to Roseburg twice. Did he figure in anything for that?

A. He settled that himself. That was—

Q. When he was giving you this \$75, he didn't make any figure of that at all, did he?

A. No, sir.

Q. He just gave you the \$75 he had agreed to give you in the first place? A. Yes, sir.

Q. And you hadn't had any trouble, hadn't done anything in the transaction except what was absolutely necessary for you to do in order to prove up?

A. No.

Q. He had attended to all of the details?

A. Yes, sir.

Q. You understood when you got that \$75 there that you were going to deed the land as soon as you could get up there and get your wife's signature?

(Testimony of John Harrison.)

A. No, sir.

Q. What?

Q. There was nothing said of that at all at that time.

Q. Nothing said about it at all?

A. Not at that time, no, sir.

Q. When was the deed first mentioned? [510—
342]

A. It was afterwards; after I got home.

Q. Who came and mentioned it to you?

A. Mr. Tarpley.

Q. Did you ask for any more money?

A. No.

Q. Did he offer you any more?

A. Not of Mr. Tarpley, I didn't.

Q. What?

A. No, sir, not to Mr. Tarpley, I don't think.

Q. Well, did anybody ever offer you any more money?

A. No, if they had I would have taken it.

Q. You didn't ask for any more?

A. I couldn't strike anyone that would give me any more.

Q. Who did you try to sell the land to?

A. I couldn't exactly pick them out; one of the Mealey's was mentioned by a part of us who had seen the man, but there was no better offer.

Q. What?

A. There wasn't any better offer made.

Q. When did you offer it to Mealey?

A. Well, it was after—after we had proved up?

Q. What? A. After we had proved up.

(Testimony of John Harrison.)

Q. How long? A. The same day, I think.

Q. What Mealey was it you offered it to?

A. I wouldn't say for sure, but I think it was one they called Judd.

Q. Which? A. Judd, I think.

Q. Was he there in Roseburg?

A. I think so. One of them was there; I think Judd.

Q. What was he doing there?

A. I don't know. [511—343]

Q. He had never bought any timber land at that time, had he?

A. I don't know, but he knew of parties possible, I thought, or thought he might.

Q. What?

A. I thought he knew of people that might want to buy it.

Q. Did you see Mr. Kribs there when you made the mortgage?

A. If I did, I didn't know him; I could not say.

Q. Who did you sell your land to?

A. As near as I can tell you, I did not see the man, his name was Willd—something like that.

Q. You have learned since it was Willd, did you? You did not pay any attention at that time, did you?

A. I seen the name, but I didn't know the man; didn't pay any particular attention.

Q. Made no inquiry where he came from, who he was or anything about it?

A. Not particularly, no, sir.

Q. Did you ever pay any attention to the transaction after you signed that deed, at all? Or hear

(Testimony of John Harrison.)

any more about it?

A. No, I paid very little attention to it afterwards.

Q. What?

A. Very little afterwards—very little. I thought it was all over with.

Q. You got the \$75 that you anticipated getting in the first place, and dismissed the matter from your mind?

A. Yes, sir.

Q. Do you remember about a year or more later some gentleman coming up there and taking an affidavit?

A. Yes, sir.

Q. Who told you that there would be a gentleman up there to take the affidavit?

A. I think McKinley said there would be one up there. [512—344]

Q. How long before?

A. I could not say; a short time, probably.

Q. And do you know the name of that man?

A. I am not certain, but it strikes me a man by the name of Matthews, but I am not certain.

Q. Mathers, wasn't it? A. I think so.

Q. Did you give him an affidavit?

A. Something, an affidavit of some kind.

Q. Wasn't it Stratford? A. Sir?

Q. Wasn't it Stratford? A. What?

Q. Wasn't it Stratford instead of Mathers?

A. It might have been; I could not say for that. I am not acquainted with him at all.

Q. Who was present there when you made the affidavit?

A. I couldn't tell you just exactly who. There

(Testimony of John Harrison.)

was part of the seven also.

Q. I invite your attention to the signature of an affidavit of claimant in Government's Exhibit 28, and ask you if you signed that? A. Yes, sir.

Q. Was that the only affidavit you ever signed in regard to it?

A. As far as I remember, yes, sir. It is.

Q. Do you remember in that affidavit being asked this question: "Who, if any one, located you or showed you this land? A. Mr. Dan Tarpley. Q. How much, if anything, did you pay him for his services? A. About \$25." Did you answer that question in that way?

A. If I did that was put in with this location fee in the \$600.

Q. How is that? [513—345]

A. That would have been in on the \$600 on location fees.

Q. Oh; did you ever agree to pay Tarpley any \$25? A. No, sir.

Q. What? A. No.

Q. Nor anybody else \$25?

A. I was to pay Mr. McKinley, if we didn't let him have it. If anyone else bought the land to pay him location fees, yes, sir.

Q. What? A. Was to pay McKinley.

Q. But you thought McKinley got the land, didn't you?

A. He did, and therefore there was no location fee.

Q. No \$25 to anybody. "What disposition have you made of the land since you obtained your final

(Testimony of John Harrison.)

receipt therefor? A. I sold it. Q. To whom?

A. To John A. Willd. Q. How much did you

receive for it? A. Near \$800." Did you get any \$800 from John A. Willd?

A. I don't think it was quite that much.

Q. You thought that \$600 covered the entire transaction, didn't you? A. Yes, sir.

Q. Why did you tell this man \$800, then? I say, why did you tell this government agent that you got \$800 for it?

A. I couldn't say that I told him that; I don't know I did. I don't remember.

Q. I ask you if you remember this question and answer: "How did you happen to go to Mr. Kribs to borrow the money for this purpose?" That is, to prove up. "A. I was told that he had money to loan." Did you go to Mr. Kribs to borrow any money? A. I went to Mr. McKinley.

Q. What? [514—346]

A. I went to Mr. McKinley, not Mr. Kribs.

Q. Went with McKinley?

A. Yes, sir, and it must have been Mr. Kribs' money. We gave a note to Mr. Kribs.

Q. You understood when you went into the transaction McKinley was going to put up the money, pay the expenses and attend to the entire transaction, didn't you? A. Yes, sir.

Q. You had nothing to do except when you had to go to Roseburg to sign the papers?

A. I understood that, yes, sir.

Q. Do you know Mr. Puter?

A. Just know him when I see him.

(Testimony of John Harrison.)

Q. Ever have any dealings with him in regard to this transaction? A. No, sir.

Q. I ask you if you remember this question being asked you: "Did you have this transaction of the sale of the land with Mr. Willd personally, or did some one act as his agent in purchasing the land for you?" "From you," I suppose. "A. Mr. Puter acted as his agent."

A. I didn't have any dealings at all with Mr. Puter that I remember of. If I did, I don't remember.

Q. Do you know why you answered the Special Agent that it was Puter? A. No, sir.

Q. How is that? A. No.

Q. Don't know why you did it? A. How?

Q. Don't know why you did it? A. No, sir.

Q. Was Mr. Kribs or Mr. McKinley in the room when the affidavit [515—347] was being taken?

A. I could not say as for that, I am sure. It was quite—

Q. Did you meet Mr. Kribs up there at Brownsville about that time?

A. About that time, or right after, I did. Anyhow, the next day or so.

Q. Were you paid any money in connection with this affidavit? A. No, sir.

Q. How is that? A. No, sir.

Mr. McCOURT.—I offer in evidence the deed and mortgage usually given in these transactions.

Mortgage marked "U. S. Exhibit 77."

Deed marked "U. S. Exhibit 78."

Q. Now, that affidavit that you were shown yes—

(Testimony of John Harrison.)

terday, there, that you made before Mr. Burns, you read that, or it was read to you and you signed it, did you not? A. Which?

Q. It was read to you before you signed it, was it not? A. I think so.

Q. And you intended to tell Mr. Burns the truth, didn't you?

A. I did, as far as I went, yes, sir.

Q. You canvassed the thing carefully with Mr. Burns? A. Not very, no, sir.

Q. How is that? A. Not very much.

Q. Not very carefully?

A. Pretty reckless piece. It was rather exciting times—

Q. Did you appear as—

Mr. LIND.—Let him answer the question.

Q. Did you appear as a witness before the grand jury at that time? A. No, sir.

Q. Weren't called? You were subpoenaed for the trial or the [516—348] grand jury, do you remember which?

A. I was subpoenaed before the grand jury.

Q. Now, when Mr. McKinley first talked to you at Brownsville he told you he had seven claims?

A. Yes, sir.

Q. And if you could get some more of the boys to take them that there would be \$75 in it for each of you?

A. Yes, sir, that there would be that much anyway. He left it just this way. It was over the telephone in a few words; that we could get that much out of it—he would insure that much, and if we could

(Testimony of John Harrison.)

sell it for any more, all right.

Q. He told you you might sell it to somebody else?

A. Yes, sir.

Q. What was he to get if you sold?

A. He would get the location fees?

Q. What?

A. If we sold to others he would get the location fee.

Q. But you were to have \$75? A. Sir?

Q. And you were to have \$75 for it?

A. If he got it.

Q. But you had not sold it yet when you got the \$75? A. No.

Q. What? A. No, sir, had not.

Q. You were to get the \$75 whether you sold it or not, and you were to have that in advance?

A. That would be covered by the note for \$600.

Q. What? A. We gave a note for \$600.

Q. Oh, yes, for \$600. Did he say anything about the \$600 when he talked over the phone?

A. No, sir.

Q. Did you ever figure up to see if they got the \$600, when [517—349] you got down there?

A. I don't think I did.

Q. What?

A. I don't think I did. I couldn't say now.

Q. As a matter of fact, there was over 170 acres in your claim, wasn't there?

A. I couldn't say as to that. [518—350]

Q. As a matter of fact, there were over 170 acres in your claim, weren't there?

A. I couldn't say as to that.

(Testimony of John Harrison.)

Q. Now, how much were your expenses from Brownsville out to Roseburg and back?

A. Well, I couldn't say just what they was. It was carfare and expense of team going to Halsey.

Q. What was the expense of team going to Halsey?

A. I couldn't say, but I would judge it would run up to about \$3.00 a day—\$3.00 a day, I should judge.

Q. Not for each one of you?

A. No, but for the team, besides keeping it. I think we kept it there while we was gone.

Q. How many days were you gone each time?

A. About three days.

Q. How is that?

A. I think it was part of three days.

Q. And what was the fare from Albany to Roseburg?

A. Got on at Halsey. I don't know—I think it is about \$3, or something. I wouldn't say for sure—something about \$3.00; right close there.

Q. How long did you stay in Roseburg each time?

A. We was there part of one night, or part of one night, all day, and the next night, till some time the next day, as near as I can remember now.

Q. Well, it cost you at least \$15 for each trip, wouldn't it, there and back, and hotel bill and all?

A. I expect. I never figured it up at all—don't remember about what it cost.

Q. Now, that would be something over \$540 for your claims, counting the \$75 to you? McKinley would not be getting [519—351] \$100 out of that, would he? A. I don't know, I am sure.

(Testimony of John Harrison.)

Q. You claim he paid you something more for expenses you had been out too, didn't you?

A. Just I was out board bill, going up there and back, such as that. That was all. He didn't pay no wages—nothing of that kind; just expense. That has been so long ago I could not tell you just how that was arranged. Satisfactorily at the time, and that is all I know about it.

Q. You started in to get \$75, and when you got it you were satisfied?

A. Well, I let him have the claim when I got the \$75. I had it, I was satisfied to let it go at that. I thought that was as good probably as I could do.

Cross-examination.

(Questions by Mr. BANKS.)

Now, Mr. Harrison, you spoke something about, in your direct examination, McKinley stating to you that if you sold to anyone else you would have to pay him a location fee of \$100. When was that conversation with McKinley? Was it at the time that he telephoned to you, when he told you there would be at least \$75 in it for you?

A. I think so, as near as I remember.

Q. And he told you at that time that if you sold to anyone else that you would be required to pay him at least \$100 location fee?

A. I couldn't say just what the location would be, but whatever it was. That was spoke of, yes, sir.

Q. You left Brownsville, then, after that time, with six others from Brownsville, to go upon the claim prior to [520—352] filing, did you?

A. Yes, sir.

(Testimony of John Harrison.)

Q. And when did you see McKinley? You came back after going on the land? A. Yes, sir.

Q. To Brownsville? A. Yes, sir.

Q. And some time after that you went down to Roseburg to file? A. Yes, sir.

Q. Now, from the time that McKinley telephoned you until the time you took the train for Roseburg to file, did you see McKinley or have any other conversation with him? A. No, sir, I did not.

Q. From the time you first had the conversation with McKinley up to the time you filed upon this timber claim, did you have an agreement with McKinley or anyone else, that you would turn the land, or deed the land to McKinley, or to anyone else?

A. No, sir; nothing said about that.

Q. Did you, between the time you filed and the date of final proof, agree to transfer the title to this land to McKinley, or to anyone else? A. No, sir.

Q. And you say that, after you have proved up, you had offered to sell this claim, had endeavored to sell this claim, to one of the Mealey boys?

A. Yes, sir.

Q. Now, was there any talk between you and the rest of your neighbors at Brownsville, that went up to file on these claims, about pooling your claims and selling them to better advantage than \$75 a claim? Was there any talk [521—353] among you?

A. Yes, sir.

Q. What was that talk?

A. After we proved up, that evening there was some talk of that kind—of keeping them awhile. We had three months to keep them in before we had to

(Testimony of John Harrison.)

pay this note; and there was talk of that; and some of the boys was in favor of it, and some was not. Some wanted to sell—let it go—thought that was as good as they could do. There was talk of that kind, yes, sir.

Q. Well, did the fact that some of them had decided to sell their claims influence you in selling yours at that time? A. Did which?

Q. Did the fact that some of them decided to sell their claims after proving up influence you to sell also? I say, did the fact that some of the boys from Brownsville had made up their minds, after final proof, to sell this land, and not retain them in a bunch, influence you in selling your claim at that time? A. Yes, sir, that did.

Q. Now, counsel has called your attention to an affidavit that you signed before Mr. Stratford. Do you remember now whether or not you made the answers that are purported to be in that affidavit? Do you remember at this time of having made the answers that counsel has called your attention to?

A. No, sir, I do not. I don't remember but mightily little about it.

Q. Now, counsel has called your attention to this affidavit that you made before Burns. Do you remember the circumstances of your having made that affidavit, Mr. Harrison, before Burns?

A. Do I remember the circumstances? [522—354]

Q. Do you remember the circumstances under which you signed that affidavit?

A. Well, partly, yes, sir.

Q. Now, I wish you would state to the Court just what Mr. Burns said to you, or anyone else said to

(Testimony of John Harrison.)

you, there at that time, with reference to the matter.

A. First when I was subpoenaed, the Marshal asked me if I would go to the prosecuting attorney's office, first. I just thought I would just as well go there as to the grand jury. So I went.

Q. Speak louder.

A. I went there instead of to the grand jury. The Marshal asked me if I would. I went up there, and I was there I don't know how many times—time after time; would talk a while, and set the next day or day after to come back, which I done. It finally went on—he insisted that it was so and so, just so and so. Well, it got to be—I was away from home—I was down here a long time, and I was anxious to get back home. He talked as if this settled it—an affidavit just settled it. That is all there was to it.

Q. Well, now, were you called before the grand jury at all? A. No, sir.

Q. You went before Burns in place of going to the grand jury did you? A. Yes, sir.

Q. Now, did Burns threaten to have you indicted if you did not sign an affidavit that was satisfactory to him?

A. He threatened it in this way, as near as the words I can tell you. He said there was no use lying to him at all. No use lying to him at all—is the way he worded it. He says, "I know how it is. It is so and so," and he says, "I can have the last one of you indicted." [523—355]

Q. Did he swear at you? A. How?

Q. Did he curse to you?

Objected to as immaterial.

(Testimony of John Harrison.)

A. I couldn't say as to that. There was pretty hot words in there, and I can't remember just to that.

Q. And he purported to tell you what the facts in the case were, did he?

A. He did, yes, sir.

Q. Well, did he ask you the contents of this affidavit, or did he proceed to dictate the contents of it himself, and then request you to sign it?

A. It was dictated by them, and then I didn't see nothing particular wrong with it, only it didn't just take only—left it that I was to sell it for \$75.

Q. Yes. Well, did he talk to you about the facts before he dictated this affidavit, or did he dictate the facts, and then ask you to sign it?

A. Yes, sir.

Q. How? A. He did.

Q. He dictated the affidavit according to the facts as he presumed they were, and then asked you to sign it—is that it?

A. To a great extent, yes, sir.

Redirect Examination.

Q. Who was with you at the time the affidavit was signed?

A. I couldn't say just who. There was two or three in there at the time.

Q. Was Blakely there?

A. I think so, yes, sir.

Q. Cooley? A. I think so, yes, sir.

Q. And W. J. Burns? A. Yes, sir. [524—

356]

Q. And a stenographer? A. Yes.

(Testimony of John Harrison.)

Q. You and Mr. Cooley and Mr. Blakely all signed affidavits similar in their tenor?

A. Something similar, yes, sir, as near as I remember.

Q. Now, you say you talked with some of the members of this party about pooling your lands. What members was it you talked with?

A. That was talked among ourselves. I think Mr. Blakely talked that for one, in his talk about keeping it.

Q. Did Hugh Blakely talk about that?

A. Hugh?

Q. Yes. A. No, sir.

Q. Nor Frank Burford?

A. I don't think either one of them cared to keep theirs.

Q. They had gone off and signed a deed and mortgage and got their \$75 right away, hadn't they?

A. Yes, sir.

Q. The only reason for postponing the execution of your deed was because your wife was not there, and Blakely's wife was not there?

A. No, sir. I thought nothing of that.

Q. What?

A. No, that is not it exactly. I did not think that I was under any obligations to let them have it unless I seen fit.

Q. How long have you known Mr. Kribs?

A. Well, I think it was about a year afterwards, or a little over, I got acquainted with Mr. Kribs.

Q. Known him right along down since that time?

A. Since that time, yes, sir.

(Testimony of John Harrison.)

Q. Do you remember Mr. Rabb, who sits at my left here?

A. I just remember him to have been up at Brownsville one time, yes, sir. [525—357]

Q. He was up there last summer?

A. Yes, sir.

Q. Do you remember telling Rabb you didn't know Kribs at all, up there?

A. No, sir, I don't.

Q. He asked you specifically about it, and you kept denying it?

A. No, sir. I don't remember any such conversation at all. I don't think I ever denied Mr. Kribs, knowing him, to anybody.

Q. Do you remember telling Mr. Rabb it was Mr. Puter instead of McKinley that paid you the \$75?

A. No, sir.

Q. What? A. No, I do not.

Witness excused. [526—358]

[**Testimony of Horace G. McKinley, for the Government (Resumed).**]

HORACE G. MCKINLEY resumes the stand.

Direct Examination (Continued).

(Questions by Mr. McCOURT.)

I further invite your attention to three letters from Mr. Puter, and ask you if you received them in the regular course of mail, following their dates?

A. I did.

Mr. McCOURT.—I don't know hardly how to identify these, if the Court please, so I can keep them together. I suppose I can just read them into the record.

(Testimony of Horace G. McKinley.)

COURT.—I think it would facilitate the examination of this case later on, if they were in the record in the order in which they are received.

Mr. LIND.—Yes. Do you prefer to read them now?

Mr. McCOURT.—Yes, I would prefer to read them before proceeding with the witness.

Mr. LIND.—These go in under the same objection as that exhibit 2.

COURT.—Yes, that is understood.

Mr. GEARIN.—It will take all afternoon to read them.

Mr. McCOURT.—Well, the Court will have to hear them.

COURT.—I think perhaps it would be better to read them in, and then they will be in in their order.

Mr. McCOURT.—You catch the telegrams as I proceed with the letters, Mr. McKinley.

A. Yes.

Mr. McCOURT.—“Salem, Oregon, January 9th.”
[527—359]

A. Beg pardon. Here is a telegram “January 3d. Will go through Albany on 16 tomorrow morning.” That has nothing to do with the matter in hand.

Mr. McCOURT.—“Salem, Jan. 9. Friend Mc. Since I telephoned you, I heard from Roseburg. The whole buis—is vacant so now we must get at it quick. I think you had better go right with them today for you will save one day for I want to hear from you this week.” “Get all those applications and assign-

ments signed in blank." That is about something else.

Mr. LIND.—The object of this correspondence is to show the relations between these two parties and the only way we can get at what those relations are is by having the entire correspondence.

Mr. McCOURT.—Well, I will read the entire letter.

U. S. Exhibit No. 79.

“Salem Jan. 9.

Friend Me.

Since I telephoned you, I heard from Roseburg. The whole buis—is vacant so now we must get at it quick. I think you had better go right with them today for you will save one day for I want to hear from you this week. I would like to hear from you Sat. and get all these applications and assignments signed in blank. You can promise those girls down there a few dollars in case we get the land and mail them to me to Portland. *Roal* them up the same as I send them to you.

By your going up today you can have all day Thursday and Friday in the woods. You will have a good enough idea by that time and then you can come out to [528—360] Lebanon and telephone to me. The No. of this certificate is 9247, SW. $\frac{1}{4}$ of 36 10-4, Linn Co. assigned to me and dated today, Have two other signed. I will sign O. S. Sones' name myself.

The rankin trail consists of all those sec south of south fork of Rock Cr. and it is hung up at present for cancellations. Was located under old Act and

can't be bought.

Now get out to the telephone by Sat. noon so that I can hear from you. I will be here.

I want to talk to you at noon or soon after. Call me up. I will be at the hotel.

STEVE."

Q. Where did you receive that letter, Mr. McKinley?

A. At either Brownsville or Albany.

Marked "U. S. Exhibit 79."

U. S. Exhibit No. 80.

"Portland, Ore. Jan. 20.

Friend Horace:

I leave at 3:30 tomorrow direct for West Superior will stay there probably two or three days, then to La Crosse and will work there for all there is in it on those 32 $\frac{1}{4}$, will stay there probably three days. Now, write to Withee and give him an estimate, that is, tell him that you put in ten or fifteen days on that land and that there isn't a $\frac{1}{4}$ but what will cut (—) whatever you want to say, and at the same time tell him that I went down to see you and that I am on some kind of a big deal and wanted my money \$8,480 dollars right off and for Christ sake not to let me get [529—361] away from La X for if I do that you will lose all and etc. I will write him myself a line or two this eve and tell him when I will be there and that I would like if he could in the meantime, see someone there who might take those claims for you and hold them. Now, give him a hell of a letter and wire him also about the time I get there. I will let you know by wire when I get there. Those enclosed assignment blanks, I want you to witness and fill in

everything except description and who assigned to. I can do that on the typewriter like we did the others, date them all January 26, for the certificates will not be made out until Jan. 24 or 25. Mail them to me at La X. The certificates will be sent down here and Sadie will forward them to me. Be sure and put seal on.

I will enclose you all the money I can spare in this letter and for Christ now get in and file on all those claims and if you can't get enough there have Basil send some from Salem and get Glasses"—what does that "Glasses" mean?

A. It is the name of some people there, the Glasses. There is several of them—several brothers.

Mr. McCOURT.—(Continues reading:) "And those from Brownsville. I think you ought to get enough there by promising to pay \$5 to some one for each one, at the same time have two or three parties working on those terms. You know when one files they always have some friend. You may get several from Oakland, The Home and other places. Lowell may have one or two to send you. [530—362]

Now just as soon as you get through, go up to Foster and Get Mealey to work on the trail. I will write him tonight that I will send him a hundred for my plan is to bring some good man out with me inside of twenty days and take him over the trail so that we will have the money when needed.

I will have some one and don't you forget it.

Now write me giving me names and descriptions filed on and date of proof and as soon as paper is published, forward two or three copies to me. Do

not say anything to anyone at La X. until we close the 32 $\frac{1}{4}$ deal, for it may interfere Gildner had several men to go down. I told him the land was all gone and the deal was off. Don't want him to know anything about it.

You can get a raft of fellows in that saloon when the fight takes place. Get one and you get them all. Can't think of any more tonight.

Oh, by the way, have Tarpley sign the enclosed blank and you date and fill in the balance. Put seal on. The name is Edward M. Flinn. Have Porter file on Sec. 33 & 35 14-3 and say nothing to Mealey about that for any section that he doesn't give, we don't have to pay for.

Well, I guess I haven't any more to say. I wish you would try and get in all the women you can for they are better than the men.

I enclose 50.

S. A. D. P."

Q. Where was that letter received?

A. At Albany. [531—363]

Marked "U. S. Exhibit 80."

U. S. Exhibit No. 81.

"Chicago, Jan. 22, 1900.

I want you to file those two applications as soon as you get them and take care of the assignments. I will either wire you or send you a check for the first payments and as soon as I do get certificates and fill out assignments and forward to me, always have assignments to me and attach extra blank. Now, in case you get this letter before you wire me to St. Paul I would prefer you to wire me to West Superior for

I go direct from Grand Forks to West Superior and will be there all day Thursday, Friday to St. Paul, Sat to LaX. Maybe not before Monday morning will I get to LaX for I may be detained at West Superior. As soon as I can I will, go there.

I am now about one hundred miles out from Spokane. The dam train is starting again so I will conclude for I can't write when it is moving.

Dam this road anyway, the bumnest I ever seen.
STEVE."

Marked "U. S. Exhibit 81."

Mr. LIND.—What road was that?

A. The Great Northern. Now, Mr. McCourt, I have a telegram the 25th of January. The telegram says:

U. S. Exhibit No. 82.

"Duluth, Minn. Jan. 25, 1900.

H. G. McKinley,

Albany, Oregon.

Wired one hundred First National have all filings made immediately.

S. A. D. PUTER.

[532—364]

1:40 P. M."

Marked "U. S. Exhibit 82."

U. S. Exhibit No. 83.

"West Superior, Wis. Jan. 25th, 190

Friend Horace:

I met your friend Stanton tonight. He is a very nice fellow but plum out of his line in trying to sell timber for Christ sake don't give him any Oregon timber land for sale. Sence he got your letter offering a tract of 15000 acres of Oregon timber land for

sale at \$5.00 per acre with 16 millions feet or more for $\frac{1}{4}$ sec, he has advertised it through every real estate man in this whole country. He has shown me letters from men in Chicago, Menominee, Oshkosh and every where else, stating they are organizing a company and was going to buy the whole tract right up. One man had with him that old Sen. Stephens of Marinette. Was a going to send his man right out and buy the tract. Well, I happened to know old Stephens and that whole push ever there. They wouldn't buy anything; also he has been telling every one around here that you had claims for 5 to 8 million from \$1.50 to \$3 per a. Now I want you to discharge him right off for he only hurts the sale and cannot do anything. I hope he has not said anything at LaX. One thing good, he did not have the description for if he had I could find it in every town back here, so pay him off and be dam careful how you make such reports to parties back here for it goes to beat the band.

Now, regarding our 14-2 & 3 tract, I hope that you can get at least 55 or 56 good $\frac{1}{4}$ there I am making a fine plat here of those two towns, showing everything [533—365] up and I expect to go to Saginaw, Michigan, the middle of next week with a party from here and from there to Oregon. I have a first class man and know I can sell him the entire tract. No mistake about it providing the timber is there. I take him right out and pay all expenses. I will wire some money to Mealey and I want you to go out and see that the trails are put and put in first class places. I may come in by way of S. F. Will be there sure before 20th of Feb. I will do the best

I can with those 32 1/4 when I get to La X.

Now for Christ sake, in case you haven't all filed on on receipt of this, jump into the river for you have had time enough.

I will have another interview tomorrow with my man and will know more.

Resp.

S. A. D. P."

Marked "U. S. Exhibit 83."

Q. Where did you receive that letter, Mr. McKinley?
A. At Albany.

U. S. Exhibit No. 84.

"West Superior, Wis. Jan. 25,

Friend Horace:

I just received your dispatch, arrived here last night at 6-30.

Well, I will see all of my men here today also Hunton. I go to Duluth this forenoon. May have to stay here tomorrow. I will try and wire you \$100. If I do it will just about break me. I will have but 25 left to get to La X with, and then I can't say whether [534—366] I can make a trade or not.

I don't expect to get any money here for some time.

So you say 30 has filed. I presume by your coming to Albany you must have run out of filing material in Roseburg. I was hoping that you would get enough people in Roseburg for it is so expensive to go to Albany for them, but by all means do not go to Portland. Kepp away from that gang and get every darn claim that is good. Of course, do not take no poor ones. I can sell the tract quicker than any I ever sold as soon as proof is made. I will send

Mealey \$100 next week for cutting trail and etc. And I want you to go up and stay with him as soon as you get all filed on and see that the trail is cut through the best for I will be out there with a party in a very short time, maybe ten of them, so as to have them see the tract beforehand and have money ready and etc.

I think I will be there inside of fourteen days. Wire me at La X Monday or Tuesday how many filed and send names and descriptions filed on and be sure to get that fellow to advertise. We can pay him within a few days but do not allow the adds to be delayed.

Will keep you posted of every day of my whereabouts and what I am doing. When you leave Roseburg, let me know where to write.

PUTER."

Marked "U. S. Exhibit 84."

Q. Where did you receive that letter, Mr. McKinley?
A. Albany. [535—367]

U. S. Exhibit No. 85.

"January 28th, 1900.

Friend Horace:

I arrived here last evening and learned today that Withee has gone to Europe and will not return for six months or more. Left here last Wednesday with his wife and Rose. He got on another spree after New Years Day and went up to La Salle so I suppose his wife is a going to try and cure him in Europe. Well, he is cured already.

I suppose that will settle the deal for you know none of those fellows will do anything. I am afraid now that I will have to let those certificates go down

cheap for I am broke and need as you know, lots of money now.

I expect to be out there with some one inside of 15 days; that tract if we can get it, I can sell to several different parties. There will be no trouble about that. Now I hope that you have it all filed on.

Well, I will see every one here tomorrow and next day and see what I can do and will let you know by wire.

Resp.
S. A. D. P."

Marked "U. S. Exhibit 85."

Q. You received that where?

A. At Albany. [536—368]

U. S. Exhibit No. 86.

"La Cross, Wis. Jan. 29, 1900.

H. G. McKinley,
Salem, Oregon.

Withee New York cant do anything here will I go New York.

S. A. D. PUTER."

Marked "U. S. Exhibit 86."

U. S. Exhibit No. 87.

"Jan 29

Friend Horace:

I received your wire asking for another 100; well I have now but \$10 dollar and when I get to Milwaukee I will have to borrow so I can't send it unless I close the deal here and that looks dam slim.

Hyde will be here tomorrow and I will submit a proposition to him but I don't think that any of them will take it. Haskell is the only one and as he

has gone to N Y for to be gone six months, I think the chances are slim. I wired you wanting to know whether to go down there or not. I don't know whether it would do any good. I hardly think it will. Well, I will do ~~what~~ the best I can. Now get those filings on some way, for as I said, I will have some one out there soon and if that timber is as you say it is a go, but get all you can and as soon as I get my money I will send it to Mealey and let you know. I meet Hyde tomorrow. I will have to borrow a few dollars from Jerry to go to St. Paul tonight, as I got a wire to come up there but I will be back here in the morning at about noon and tomorrow night I go to Stillwater, so by the time you get this letter I may be in Saginaw, New York or in hell for all I know, so don't wire until you know where I am.

Yours truly,

STEVE." [537—369]

Marked "U. S. Exhibit 87."

U. S. Exhibit No. 88.

"Minneapolis Minn Jan. 30, 1900.

H. G. McKinley,

Salem, Ogn.

Will probably wire money soon file all parties somehow Lacrosse tomorrow probably go New York.

S. A. D. PUTER."

Marked "U. S. Exhibit 88."

U. S. Exhibit No. 89.

“Minneapolis, Minn. 1-30-1900

H. G. McKinley Esq.,

Albany, Ore.

Dear sir:

Now in regard to wiring any more money, that is out of the question unless those La Crosse parties come to time. However, I am going down there tonight and will do what I can and if I fail to make a deal there, it will be useless to ever try it again.

Just as soon as I get the money, I will wire you. I presume the best thing I can do is to go right on to New York and see Whithee.

Regarding those filings, don't fail to get all claims filed on, I presume you have them by this time anyhow. From La Crosse I go straight through to Saginaw, Mich., to make arrangements with some parties there to go with me to Oregon and look over those lands and if satisfactory will have the money ready at the time of final proof. I think this is a sure go. I am putting [538—370] in altogether 56 quarter sections. I may possibly get on to one or two quarters that are not filed on, but it will be easy enough to switch. As soon as I get money I will wire it to Albany, to be paid to Maley for cutting roads etc., and will write him full particulars in the meantime, also will wire you, for I want you to be with him and see that those trails touch about all the quarter sections and go by several corner posts, as the man that is going out will want to ride horseback most of the time in making the examination, so if there is good work done on the trails, it will

only require from 2 to 3 days to take him through.

At the same time, I am going to try and make a deal with the La Crosse party—Whithee, Mr. Hyde and another man and tie them up in this same Oregon deal if I can, so in case the Saginzw parties fail to take it, the others will, but I have no doubt but what I will make the sale to the Saginzw people. The price I am making the tract to them is \$1000. per quarter, amount of timber per quarter section not less than 10,000,000 ft.

In case there is any way to dispose of those lands of yours, I will hold out those two sections, for they must go in with the other tract.

It will be no use for you to wire me after receiving this letter as there is no telling where I will be unless you hear from me by wire

Very truly yours,

S. A. D. PUTER.”

I was called back here on the Red Wood deal and expect to go to California within the next ten days, or I may go to Oregon first.

S. P.” [539—371]

Marked “U. S. Exhibit 89.”

U. S. Exhibit No. 90.

“1/31/100

Friend Horace:

I interviewed all those fellows today, Goddard, Hyde and another party. Hyde goes to California this afternoon and of course would not talk timber at all. Goddard would go in if Withee would so to hell with La X. You never see me stop here again. Now I can't say whether or not to go to N. Y. for if I should go there and do nothing, it will put me back for a

time and be out money besides. I thought perhaps if Withee would put up \$4000 with me and get Goddard to buy but I don't know. I hardly think he will do anything. I will wire you from Chicago or N. Y. in case I conclude to go. Dam it I need the money so dam bad now for expenses and in order to take the parties to see the 14-2 & 3 tract. I will decide tonight in Milwaukee, I leave for there in a few min 12-50, so I want you to wire me on receipt of this. How many filed and send description filed on as I stated before, also put seal on — assignments that I sent back and forward to Chicago. Wire care Palmer House.

S. P.”

Marked “U. S. Exhibit 90.” [540—372]

U. S Exhibit No. 91.

“Appleton, Wis., Feb. 1st, 1900.

Friend Horace:

Well, I haven't heard anything from you for some time, I have been expecting a letter showing exact descriptions filed and date and etc.

I came up here to see what I could do with 'B' but he is not here. I tell you I am dam hard up, land poor and haven't got a cent—been borrowing for two weeks; I did not get the money on that check on Withee either.

Now, I go to St. Paul tonight and will leave Chicago for S. F. Tuesday evening, will be in S. F. next Saturday, and going straight to Eureka, and right on to Oregon and will have one and maybe two parties to look at the 14—2 & 3 tract and the first money I get I will send Mealey so as to have the trail cut.

Now you want to be awful careful how you talk to anyone regarding that tract; do not say one word about it; you know if parties out this way get on to it that we was offering that tract before sale before parties proved up, you can't tell where we would land. Be awful careful. I can get all the money I want to carry it providing the timber is as you say. I will try and get Goddard of La X to send a man out to look at those dam school secs. He is on the buy and if that dam fool Haskell would take hold, Goddard would take it all. [541—373] .

Write me at S. F. and send me a few copies of papers with timber filings in. You ought to have sent me that before, also the blanks that I returned to you for to get seal on. Send to Palace Hotel, S. F.

Very truly,
PUTER."

Marked "U. S. Exhibit 91."

U. S. Exhibit No. 92.

"Chicago, Ill., Feb. 2, '00.

H. G. McKinley,

Roseburg, Ore.

No money better wire me go New York your expense.

S. A. D. PUTER."

Marked "U. S. Exhibit 92."

U. S. Exhibit No. 93.

"Chicago, Ills., Feb. 3rd, 1900.

H. G. McKinley.

Will be New York Monday morning Waldorf

Astoria—Please forward.

S. A. D. PUTER.”

Marked “U. S. Exhibit 93.”

Q. Were you at Roseburg at that time?

A. I was at Roseburg, yes, sir.

U. S. Exhibit No. 94.

“2/3/1900.

Friend Horace:

I leave for N. Y. this eve at 10 and if I find Withee I will know Monday, providing he is sober, whether I can make a trade or not. I am afraid it is a wild goose trip. Well, hell, how can I wire you [542—374] money when I haven't got it myself. I will send it as soon as I get it. I haven't had time back here to make a dam sale and have to borrow money to go to N. Y. on. I will wire money as soon as I get it. I will be in S. F. on or before Feb. 14.

Very truly,

STEVE.”

Marked “U. S. Exhibit 94.”

Q. There seems to be a hiatus here between the 3rd of February and the 18th. Do you remember whether you received any letters between those dates?

No, I do not think I did. I have a telegram here from him, the 14th, and there are those three letters that I brought over, Mr. McCourt. Maybe one of those is in between.

Mr. McCOURT.—I presume with an explanation, I might introduce this telegram of Withee into the record. It shows the connection.

U. S. Exhibit No. 95.

“New York via Roseburg, Ore.,
Feb. 5, 1900.

H. G. McKinley,
Salem, Ore.

Puter here can do nothing for you my answer
final.

N. H. WITHEE.”

Marked “U. S. Exhibit 95.”

Q. Now, you can read that telegram, Mr.
McKinley.

A. This is from Omaha, Nebraska, February 14,
1900.

[U. S. Exhibit No. 96.]

“H. G. McKinley, Albany, Ore.

Say nothing more about fourteen three deal tele-
phone me Friday evening San Francisco.

S. A. D. PUTER.” [543—375]

Marked “U. S. Exhibit 96.”

U. S. Exhibit No. 97.

“Sunday 18, 1900.

Friend Horace:

I received one letter yesterday written Thursday
afternoon; well, all you have to do is say nothing
to no one.

To hell with that Northern Pacific man. No one
can prove anything, just keep quiet. One thing, you
had no right to tell anyone you had that land for
sale, that man you wrote to in West Superior has
offered to everyone in that country for \$5 per acre.
I only seen one man there and told him all about it

and to say nothing, for he is a man that understands all about the bus and has lots of money, his name is I. S. Stevens of Saginaw, Mich., and he is in Portland now. I have known him a long time. I was to take him on to the land and if it was all right Stevens was to handle the *buis* when it came to proving up. So that man Hunton went right to my man back there and offered him the same land at \$5 per acre. I have been holding it at \$7.50 per acre. Also another man offered it for \$5 per acre and he is a tin horn gambler at West Sup. so that put me in a hell of a position.

My man's name is McClure of Duluth, and when both those men came to him, he wrote and wired me to come up there, which I did.

So for *Crist* sake, either write or wire that man Hunton to declare everything off. If we are not mighty careful we never will swing that tract. Now what I [544—376] want you to do is say nothing to no one, only to those parties that filed, and say nothing to them unless they tell you something they heard for we will have to post them up just before they file.

Now I will send Mealey \$75 today for that is worth more than it is worth to cut a trail and I wish you would go with him and have a trail cut through the green timber if possible and only one trail is all I want and that must go through the middle of each section, may wind around of course through the good timber, you see it will require more time than anything else in selecting the proper place for the trail not to get it in any bad places, and touch some

of the corner posts when possible and have the trail so a man can ride a horseback all the way through.

Now on receipt of this I want you to strike right out to Mealey's and take a trip with him and get him started in right off, for I will be on the ground anyway by March 1st. So he has to rustle. I will enclose the check in this so you can take it right up with you. Now regarding the other claims. Dam it, I haven't got the money to spare, or I would send it up. I will have to send up now to Eureka for a hundred or so. I bought a lot of that school land and haven't sold a darn claim. What you ought to do is write Goddard at La X to come or send a man out and you will pay his expenses for to look at those 321/4. He is the only man that I know who might buy them. He wanted to go in bad but Withee wasn't there and Withee will do nothing, in fact he has almost lost his senses; the sprees that he has been on lately [545—377] and medicine that he has been taking has knocked him plum out.

Now if there is any chance to get scrip from Odell get it right off at \$3 and don't fail to get right to work for I will be there on or before March 1st with a man.

Resp., S. A. D. P.

4 P. M.

Since I wrote you I received your letter with Mealey's letter enclosed. Now don't you think you could get a few of Mealey's friends to do down and file, get Mealey and his father, mother and sister; I would agree to pay them one hundred providing they would pay their own expenses down on first

trip. We ought to get at least eleven more 1/4, that will make 60 with the two school secs., so try and get them in some way.

Well, regarding Withee, I thought I wrote you he will do nothing; I offered him all kinds of propositions but he refused.

Now get Mealey to work as soon as you can and tell him that I will give him a new contract for his 500, you know we have to stand in with him by all means.

I will wire you as soon as I leave provided I leave before you get this or about that time.

STEVE."

Marked "U. S. Exhibit 97." [546—378]

U. S. Exhibit No. 98.

"Feb. 20, 1900.

Friend Horace:

Well, I start for Coos County tomorrow, and expect I will have a hell of a trip, have to go up there on one of the darndest old tubs you ever see. Will arrive there at 10 A. M. Sat. and I expect to leave there Monday for Salem and will be in Salem Tuesday and Tuesday night will go back to Albany with my man and Wednesday take him up to 14-2 & 3 just for a flying trip. By the way Stephens from Portland may go down to see that land, so in case he does, show it to him and be darn careful how you talk to him; don't say much. The best thing for you to do is to get ahold of Goddard the first thing don't let Thompson at Eugene get him. He will buy those 32 1/4 that is the 24, for we want to

(Testimony of Horace G. McKinley.)

reserve two sec. You want to show him 14-2 & 3 also and don't offer the tract to no one less than \$7.50 per acre. I will send it to Sadie. Well now, I hope you have gotten Maley to work and he will do a good job. He ought to for 75 dollars. I presume you will be back in Albany Friday or Sat. don't say to Gildner word or anyone else where I am or what I am doing. I don't want that dam gang keeping tab on me.

I may call you up from Marshfield.

S. A. D. P."

Marked "U. S. Exhibit 98." [547—379]

U. S. Exhibit No. 99.

"Received at Albany, Oregon.

San Francisco, Feb. 20th, 1900.

H. G. McKinley,

Albany, Ore.

Any snow and when will you be at the trail.

S. A. D. PUTER."

U. S. Exhibit No. 100.

"Ashland, Ore., Feby. 24, 1900.

To H. G. McKinley,

Brownsville, Ore.

Will be in Salem tomorrow morning, going Roseburg at noon.

PUTER."

Marked "U. S. Exhibit 100."

Q. About the 20th now, Puter came back to Oregon, or reached Albany there, a little after the 20th?

A. Yes.

Q. Can you give the date there when he reached Albany?

(Testimony of Horace G. McKinley.)

A. Tuesday the 20th. That is the 20th of February, wasn't it?

Q. Yes.

A. To Salem on the morning train. Returned on night train. 21st to Brownsville on the afternoon train. No, I have not the date, when he reached here. I have made no mention of it. Except the 24th. Went to Albany on the morning train. Left for Salem, went on through to Portland, and returned on the evening train. Met Puter.

[548—380]

Q. Met Puter on the 24th?

A. 24th, yes, sir.

Q. Now, when did Puter again leave for the east, if he did leave, or leave for California?

A. Well, I have here that I met him on the train the 25th again, and I don't know when he left.

Q. Did he go east after that again?

A. Yes, sir.

Q. In a very short time, didn't he?

A. I think he did, yes. Yes.

Q. Well now, I will read a letter from California.

U. S. Exhibit No. 101.

“3/4/1900.

Palace Hotel,

San Francisco, Cal.

Friend Mc.

I received a letter from Mealey. I think we had better stand in with him. I just wrote him that I wanted that trail cut so see that it is done, and tell him that I will change the contract when I come up.

I leave for Eureka tomorrow and will be in Salem on or before the 12th.

Resp.
STEVE."

Marked "U. S. Exhibit 101."

U. S. Exhibit No. 102.

"March 5, 1900.

Palace Hotel,
San Francisco, Cal.

Friend Horace:

I wish you would send me several of those [549—381] papers with those filing ads in, also showing the last batch. I believe they will be in the Lebanon paper. I made a deal with Peyton on the Coos Co. land. He has paid Baldwin the \$15,000 so now if I can work things just right I can sell B a tract and I will want your help, so let me know where you will be all the time so that I can get a letter to you. I expect to go to Eureka tomorrow or next day. Am waiting for my party and when I get there I will raise all the money I can and get to Oregon as quick as possible. I wish you would look up all the good school land that you can that can be cancelled. I will write you again tomorrow.

Very truly,
S. A. D. P."

Marked "U. S. Exhibit 102."

U. S. Exhibit No. 103.

"San Francisco, March 6, 1900.

Palace Hotel.
Friend Horace:

I am still here. I got two telegrams from my par-

(Testimony of Horace G. McKinley.)

ties in the East from Minneapolis stating they would be here on Friday 8th and to engage berths on the steamer for Saturday for Eureka, so I am killing time waiting and can't get a cent until I get to Eureka. I will get out of there as soon as possible. I will go right on via Crescent City to Grant's Pass.

That was a dam short conversation over the telephone this eve; you could have found out that I was here for a quarter just as well. I have written you two letters to Albany. How about the trail. Have you got anyone to work. [550—382]

Now, do not forget to look up all the good $\frac{1}{4}$ secs. that is subject to cancellation that you can find for I will want to get a batch of them in order to raise all the money I can for the Linn Co. tract. I presume I will hear from you Thursday noon providing you get the letter off tonight.

Very truly,

PUTER."

Marked "U. S. Exhibit 103."

Mr. McCOURT.—I don't seem to have any letter of March 8th.

A. That is one of those I brought over from the hotel. It is in one of those three envelopes I handed you.

Q. (Mr. McCOURT.) Oh, it is one of those.

U. S. Exhibit No. 104.

“March 8, 190

Palace Hotel,

San Francisco, Cal.

Friend Horace:

I sent letter to Albany same date of this. Send after it.

STEVE.”

Marked “U. S. Exhibit No. 104.”

U. S. Exhibit No. 105.

“March 8th, 1900.

Palace Hotel,

San Francisco, Cal.

Friend Me:

Why the divil don't you write when you say you will. You called me up by phone and said you wanted to write. Now I could have went to Eureka today on the North Fork, but *wated* to get your letter thinking [551—383] it was important, no letter. I will go up there. Now on Saturday I got a despatch was forwarded from Eureka. It was from a man at Minneapolis stating to meet him here the 13th. He is one of the best men I found in the east for the Linn Co. tract. I wired him that I would meet him, so I will have to come right back on return boat from Eureka and I expect to go right on to Salem probably will be in Salem the 16th. Let me know how everything is and if you have got Maley on the trail, for I will be there shortly with some one. In case that man Goddard is there, why don't you take him out on 1+ 2 & 3? On receipt of this

I want you to get two blank assignments and do the notary buis, and send them right down to me they are some that I want to assign to some one, so date them January 3rd, 1900, and *and* fill them all out except putting in name to whom assigned to and description. I can do that on the typewriter also get me a blank promissory note, one of those that they have in Lad & Bushe's Bank or Portland Bank, and send it also. Get them here by the 13th.

Very truly,

PUTER."

Marked "U. S. Exhibit 105."

Q. Now, will you please read the letter of March 9th, from the Palace Hotel, San Francisco?

U. S. Exhibit No. 106.

"March 9th, 1900.

Palace Hotel,

San Francisco, Cal.

Friend Horace:

Your letter at hand today and telegram also. It [552—384] is no use wiring to me for money, for I haven't got a cent. I have borrowed from Larry and Emma now so dam much that I do not want to ask for any more. My man from Minneapolis just got here this evening and we go to Humboldt tomorrow. I also got a telegram from Smith of Minneapolis, for to meet him here the 13, so now I do not know how I am to do it. I *wires* him that I would. He is the best man I have for that Linn Co. tract and I must meet him. His cruiser Mr. Kribs I have been expecting to see ever since I came back here but he is up in the sugar pine belt, he has not

(Testimony of Horace G. McKinley.)

got back. At any rate I will have to get back here 13 or 14 to see Smith and I presume I will go on to Oregon with him. In case I can get any money at Eureka, I will wire some to you. I will do what I can there. I don't like this man very well that came out he will not like the country. I am afraid he is too chicken hearted for those mountains. I think you had better go and stay with Maley and try and get the trail cut it will be hell to take men through in a short a time as we have and besides I want to know just where to take them and that is through all of the best timber, for you know I will have to show them the timber before they put up the money, so try and get the trail cut right *of*. I will be there by March 16th or 17 *shuir*.

Very truly,

S. A. D. P."

Marked "U. S. Exhibit No. 106." [553—385]

Mr. McCOURT.—March 20, 1900.

Mr. LIND.—Do you think it is important to cumber the record with that?

Mr. McCOURT.—There is a reference to Kribs in it. This letter is written—

A. What date Mr. McCourt?

Q. March 20.

A. He was in the east then somewhere. I think the envelope—there is an envelope there stamped March 21st, if I remember right.

Q. March 21st shows Spokane.

A. Well, it is that letter.

Q. It does not make any difference where it was

(Testimony of Horace G. McKinley.)

written from. A. No.

Q. It was somewhere east of here? A. Yes.

Q. You received this where? Albany, I guess.

A. Yes.

Q. March 20th it is dated. The envelope which appears to belong to it is dated March 21 at Spokane, Washington. Received in Albany March 22d or 23d.

U. S. Exhibit No. 107.

“March 20th, 1900.

Friend Mc.

Why in hell didn't you mail those two assignments to me last night as I told you to. I called at the P. O. several times up to 3 P. M. and no sign of them. That is a hell of a way to do anything. Now I have no assignment to those 4 $\frac{1}{4}$ and cannot get them in, time Saturday.

I talked to Bridges over the phone today and he [554—386] told me that the proof could be put in on those claims any time during the ten days but as a matter of course, he would have to suspend the proof pending the contest. I told him that I had talked to several of the parties who filed and they all said they would put up a few dollars rather than have to fight the railroad people, that I thought they had no show anyway, and I had an idea that we could compromise, so when you see him, you can tell him that what I meant by compromise was that we would rather pay a few hundred to get them to withdraw than to waste time fighting them.

Now, don't you say but little in regard to paying anything. Do not say over 250 dollars for if you do they will think we are afraid. I think that after

(Testimony of Horace G. McKinley.)

about ten or twelve of the best ones put in proof that we can buy them out cheap. Now get to Roseburg and see all of them parties that prove up before Apr. 10 and fix them and tell them that it is all a bluff but in no way you give away the fact that we are agoing to buy them out. Leave that to me I can fix that.

Resp. S. A. D. P."

Marked "U. S. Exhibit 108."

Mr. McCOURT.—This could not have been in Spokane. It is somewhere here in Oregon.

A. What date is that Mr. McCourt?

Mr. McCOURT.—March 20th. [555—387]

U. S. Exhibit No. 108.

"Appleton, Wis., March 24th, 1900.

Friend Mc:

Well, I arrived at Minneapolis on time yesterday at 2:30 and went up and wound Salzer up to the Queen's taste. He said he would go down this morning and send a draft of \$1000 to Ladd and Bush to be paid to you on receipt of certificate and assignments to those lands. I instructed him what to do. He has to go to La X to do it. He showed me a letter from the Western Union Company stating that they could only wire \$100 at a time. I told him to have the bank wire Glass to secure those certificates that a draft of \$1000 was mailed to said Glass act. But afterwards, I told him to send the dft as I had fixed it up out there so that you could hold the land until April 2d and besides I thought you would not be there to attend to it. Also he knows that I am here. I told him that I had to be in Salem March 31st and

in case the matter was not fixed up by that time I would attend to it, so he concluded he wanted me to attend to it, so now do not do anything until March 31st for if you date those assignments sooner than that it will raise hell. Mind what I say. Also you will want to put a 10 cent revenue stamp on each assignment and cancel it and sign my S. A. D. P. to each stamp and be careful and compare each assignment and make no mistake. It is so dam easy to make mistakes. I have had to make corrections on every one of those that you got down in Salem the other day.

When that dft gets to Ladd & Bush you can give the clerk a check on Ladd & Bush for \$800 and they will give you the cert. or if you prefer to wait [556—388] until I come, I will give you the \$800 and you can get the cert and then when you get things fixed up O. K. turn them in to the bank and get the dft. that will be the best way, for I will be at Albany the morning of the 1st, Sunday without fail and will bring a \$800 dft with me and can give it to you there.

I expect to fix up a deal here today with Baldwin and will leave Chicago Monday eve for S. F. where Kribs will join me and go to Albany.

I told Salzer to get all of those secs that he possibly could at such prices and he will take all those other secs just as soon as he gets those certs back here and see how the transfers are made. In fact you are a dam fool to give them at any such figure any way it is a picnic for him.

Well, now, in case those trails are not made you

(Testimony of Horace G. McKinley.)

had better leave the state.

Resp.

S. A. D. P.”

Marked “U. S. Exhibit 108.” [557—389]

Mr. McCOURT.—Oh, yes, you want to read that telegram. I offer the telegram that Mr. McKinley has there.

A. The date is blurred there. I can't make that out.

Q. Somewhere about the first of April, isn't it?

A. I should think it was. This is sent from Ashland, Oregon. It says, “H. G. McKinley, Revere House, Albany, Oregon. Is Kribs in Albany, Answer Train sixteen, Grants Pass. Puter.”

Marked “U. S. Exhibit 109.”

Q. Kribs did arrive at Albany on the first of April, didn't he?

A. Either the first or the second.

Q. And Puter on the second?

A. I can tell you in a moment here.

Q. Or no, Puter on the 3d?

A. It is a little indefinite here, the way I have got it. (Referring to diary.) I have got it “Placed under bonds. Released Kribs and Puter, started from Mealey's with Kribs, Barr and Brandeberry the 3d.” They must have got there the 3d.

Q. What day were you arrested there in Albany?

A. I was arrested Sunday night, the first of April.

Q. And was Kribs there then? A. No, sir.

Q. When did he arrive with relation to your arrest?

(Testimony of Horace G. McKinley.)

A. I don't know whether it was the next day or the second day.

Q. In what connection was that arrest of yours?

A. In connection with these lands.

Q. You were charged with—

A. Subornation of perjury. [558—390]

Q. Subornation of perjury in regard to the timber and stone entries? A. Yes, sir.

Mr. LIND.—Well, really, I think it is immaterial, your Honor. It cumpers the record. Was it in connection with the claims involved in this suit?

COURT.—Yes, claims involved in this suit, as I understand it, these 57 entries.

Mr. LIND.—Well, all right.

Q. Who went on your bonds?

A. Mr. Puter.

Q. He had arrived there on the 2d of April?

A. He arrived there on the 2d, yes, sir.

Q. What did you do as soon as you had been released upon bail there in that case?

A. I have it here that I started for the Mealey's on the 3d.

Q. Who was with you?

A. Mr. Kribs, Mr. Puter, Mr. Barr and Brandeberry.

Q. Now, when you reached Mealey's there, what did you do?

A. We got in there in the evening of the 3d; stayed at Mealey's all night; Wednesday morning, the 4th we went up the trail into the mountains; stayed there Wednesday night, Thursday night, and

(Testimony of Horace G. McKinley.)

returned Friday to Mealey's.

Q. Did Mr. Kribs understand that the lands had not been proved up on then? A. Yes, sir.

Q. Did he understand that your arrest was in connection with those same lands?

A. I suppose he did.

Q. Now, how long was it after that before you started to offer proof on any of those claims at Roseburg, after the date that you and Kribs were there in the woods?

A. Well, some of the proofs were set for a certain date, [559—391] but they were postponed. Do you want to know what time the proofs were actually made?

Q. No. What was the cause of the postponement?

A. Well, I only have here that it was because the Register and Receiver was at Portland. I have that in here somewhere. I can find it.

Q. Wasn't that upon account of those contests?

A. That the proof was postponed?

Q. Yes. A. Well, I couldn't say.

Q. Well, never mind what the cause of it was. You came back from Mealey's there to Albany. Did Kribs come back to Albany with you?

A. I can't remember whether he did or not.

Q. Well, where did you next see him?

A. When did I next see Kribs?

Q. Yes. A. I can't remember that.

Q. Well, was he in Albany when this final proof started down there? A. In Roseburg?

(Testimony of Horace G. McKinley.)

Q. Yes.

A. Well, I have no record of that here.

Q. Well, referring to your recollection?

A. Yes. Yes, he was there when they made their final proof.

Q. When they commenced to make them?

A. Yes, sir. But they were down there, you understand, about a week or ten days before that to make it, and it was postponed. I don't think Kribs was there at that time.

Q. Well, wasn't there several days consumed in taking testimony [560—392] in those contests there before any final proofs were actually concluded? A. Some few days, yes.

Q. Wasn't there a trip made to Tacoma after the parties had reached Roseburg, before the proof was concluded? A. By whom?

Q. By Puter and the Northern Pacific people?

A. I can't remember that circumstance very well, if Puter went up to Tacoma. I think he did, but I don't remember him going to Tacoma.

Q. Wasn't that the cause of holding the proofs from the 12th of April until the 18th?

A. Were the proofs set for the 12th?

Q. I think so, or on the 13th.

A. Well, I can't remember what was the cause of that delay, any more than I have got it here that the Register and Receiver went to Portland, and they were postponed. In fact, I think they were postponed twice, but what that postponement was for I cannot recollect clearly.

(Testimony of Horace G. McKinley.)

Q. Didn't the entrymen remain there in Roseburg five or six days, quite a number of them, while that arrangement in Tacoma was being consummated?

A. Well, I don't think it was that long—five or six days. It might have been a couple of days. But I don't think those fellows—if you will just wait a moment I have something concerning that here. I have here the 10th of April, went to Roseburg with nine parties. Register and Receiver at Portland. Proof postponed. Sent six parties on the land. Left for Tacoma at night.

Q. What date is that?

A. The 10th day of April.

Q. You went to Tacoma too? A. Yes, sir.

[561—393]

Q. Who went with you?

A. I went alone.

Q. What was the purpose of your trip to Tacoma?

A. My wife was there.

Q. It had nothing to do with these lands?

A. Not at all.

Q. Now, when did you return to Roseburg?

A. I arrived in Tacoma at five P. M. Wednesday, the 11th. Thursday, the 12th I left for Salem at noon. Went on to Roseburg with men the 12th. The 13th, returned on the morning train to Albany. On the evening train with more men to Roseburg. All parties returned home. Postponed until Wednesday.

Q. What date would that be?

A. That was Saturday, and Wednesday would be

(Testimony of Horace G. McKinley.)

the 18th of April.

Q. Now, then, Friday and Saturday, while you were there, what were you engaged in?

A. Well, I returned on the morning train to Albany. On the evening train with men. More men to Roseburg—I took them down Friday night. And I learned Saturday for some reason that it was to be postponed till Wednesday, so we went back again.

Q. Now, how many men was it that you sent back there till Wednesday, and who were they?

A. All parties, I have it.

Q. All parties? A. Yes, sir.

Q. So that all of those people who afterwards made proof on April 18th, you had to take them back the third time? A. Yes, sir.

Q. To Roseburg? A. Yes, sir.

[562—394]

Q. Now, then, laying aside your book for a moment, what were the transactions there leading up to the trip to Tacoma, and the postponement—the trip to Tacoma by Puter?

A. Well, if Mr. Puter made a trip to Tacoma, I suppose it was in connection with the contest that the Northern Pacific had started against these claims.

Q. How long before this proof date had the Northern Pacific interposed contests against the claims?

A. Quite a while. I don't know the date, but that would be long before I was arrested in Albany.

Q. Some three weeks or more before you were arrested in Albany? A. Possibly so.

(Testimony of Horace G. McKinley.)

Q. Was there a contest against each and every claim, as you recall? A. Yes, sir.

Q. Now, how much of a hearing did you have there in Roseburg, over those contests before the compromise was effected?

A. I think there were two parties—two claims that they examined witnesses on, or claimants.

Q. And how much time did that consume?

A. I wouldn't be sure, but I think about two days.

Q. Was Mr. Kribs there during that time?

A. I can't say as to that.

Q. You know he was in Roseburg, at least, during the time? A. I do not.

Q. You don't remember that? A. No, sir.

Q. Now, were you consulted on that compromise?

A. Yes, sir.

Q. Did you ever meet and have a conference?

A. Yes, sir.

Q. Who was present? [563—395]

A. Mr. Puter and myself.

Q. Did you meet with the Northern Pacific people? A. I did not.

Q. What was the arrangement effected between yourself and Mr. Puter?

A. As it was finally carried out.

Q. That you would accept a settlement which would give to the Northern Pacific twenty-four claims and you would retain thirty-three.

A. That we would get parties to relinquish on 24 claims, providing they would withdraw their contests on the remaining 33, yes, sir.

(Testimony of Horace G. McKinley.)

Q. That was later carried out?

A. Yes, sir.

Q. Did you get the relinquishments?

A. Yes, sir. With the exception—

Q. What did you have to pay for those relinquishments?

A. I cannot remember distinctly. I think something like \$25 apiece.

Q. Averaged about that? A. Yes, sir.

Q. Now, after that was effected, you went ahead with the proof. Did you go and chaperone the parties back there again, or did they go back of their own accord, or did they get there on Wednesday the 18th?

A. Well, I can't remember as to that. I suppose they were notified.

Q. Well, look at your diary there, about the 17th, and see if you took them along?

A. My diary is all a blank on that week. I haven't anything there from the 15th to the 22d.

Q. A pretty arduous week. You didn't put it down?

A. I didn't have time to put it down, I suppose. Adjourned until to-morrow morning at 10 A. M.

[564—396]

Portland, Ore., April 22, 1910, 10 A. M.

Mr. *EULAND*.—If the Court please, the District Attorney has prepared in form the amendments allowed on the 19th, and yesterday I drew up the answers of the defendants, and they are ready to file. I spoke to the District Attorney and asked whether

(Testimony of Horace G. McKinley.)

he would object if in those answers I inserted some averments making it more specific—the former answers—as to the notice of the Interior Department prior to the issuance of patents, and the District Attorney kindly said that he had no objection to my doing so. But in drawing it up I say that I do so by leave of court, so that I will not file it without calling your Honor's attention to it.

COURT.—Very well. That will be satisfactory.

Mr. McCOURT.—May I ask if they are so broad that the complaint will not cover them?

Mr. EULAND.—Not as I understand it.

Mr. LIND.—They would not require any amendment.

Mr. McCOURT.—The replies already in may be considered replies to this matter?

Mr. EULAND.—It is covered by the general reply.

COURT.—Very well. That is satisfactory.

[565—397]

[Testimony of Horace G. McKinley, for the Government (Resumed).]

HORACE G. MCKINLEY, resumes the stand.

Direct Examination (Continued).

Q. Now, to whom did you say you delivered those relinquishments that you secured for the Northern Pacific Railroad Company?

A. The officials of the Land Office.

Q. You delivered them to the officials?

A. They were delivered there to them.

Q. Didn't you deliver them to the Northern Pacific Railroad Company, the representatives of the

(Testimony of Horace G. McKinley.)

company, and didn't they deliver them to the Land Office?

A. I could not say as to that. I don't remember.

Q. The contest affidavits, they were served on the several entrymen, and by them delivered over to you? Do you remember the notice of contest and affidavits?

A. The notice of contests by the Land Office?

Q. Yes.

A. Were delivered, you say, by me to the entrymen?

Q. No, to the entrymen, and by them to you.

A. I don't remember.

Q. You do recall that you had more or less transactions with the entrymen and explaining to them?

A. Yes, sir.

Q. What the thing was, and that you would take care of it?

A. Yes, sir.

Q. You did take it on yourself to look after that contest affair?

A. In most cases.

Q. In behalf of the filers?

A. In most cases. [566—398]

Q. You employed counsel? In fact, the only attorneys that were employed in behalf of the contestants were employed by you and Puter?

A. Yes, sir.

Q. None of the contestants appeared by attorney, except the attorney employed by you people?

A. Yes, sir.

Q. Whom you paid?

A. Yes, sir.

Q. Now, how many trips did you make up there to Roseburg in that affair?

(Testimony of Horace G. McKinley.)

A. From start to finish, you mean?

Q. Yes.

A. Well, I would have to look that up. I cannot remember all of them. Possibly four or five—maybe six, maybe seven.

Q. Maybe seven?

A. Well, I don't think there were that many.

Q. You took at least three parties up there, didn't you, to file, yourself, accompanied them to Roseburg to file?

A. I will have to consult my book on that.

Q. Well, can you tell by consulting your book?

A. I can tell the dates that I was in Roseburg. I cannot tell whether I took up parties at that time. I don't know whether I can or not. I cannot tell what is in the book without referring to it. Shall I do that? Mr. Tarpley took up some of the parties.

Q. Well, look at your book and see if you can do it.

[567—399]

A. I made one trip on January 18th. I made one trip on the 30th of January; made one on February 25th. Well, now, as that was the last filing, why, the next time I went, of course, would be—

Mr. EULAND.—February 26th was the last filing.

A. Yes, that was the last filing. I went down the 25th, and the next time I went I went in connection with these cases. I suppose it would be the time of the hearing.

Q. Well, the next time you went to Roseburg was April 9th?

A. The 9th, yes, sir.

Q. Now, between April 9th and April 31st, you

(Testimony of Horace G. McKinley.)

went to Roseburg several times—three or four times?

A. No, not three or four times. I was there once or twice—twice, I guess—between that and the 31st, you say?

Q. Yes. A. The 31st of May?

Q. No, to the 30th I mean, of April.

A. No, I wasn't there.

Q. What?

A. I haven't got an account of it here.

Q. Well, you were there on the 19th?

A. The 19th of April? I have got a blank in there.

Q. Yes, you were there at the time those proofs were made.

A. Yes, I suppose so. I have not got that down there, Mr. McCourt. I have left a couple of weeks there out.

Q. And you went back again on May 16th or 17th, when they proved up, made some more proofs?

[568—400]

A. Of May?

Q. Yes.

A. Yes. Yes, it is about half a dozen times, I think, altogether.

Q. About eight times all together?

A. Eight times?

Q. On each of those occasions, or most of those occasions Bas. Wagner or Tarpley were along?

A. I think so.

Q. Well, now, when those proofs were made, up until that time, you had paid all the expenses of the

(Testimony of Horace G. McKinley.)

entrymen in their different trips to the land and to Roseburg?

A. In very near all cases, I think yes, sir.

Q. And who paid for the publication of the notices?

A. I did. In the Brownsville "Times," you refer to?

Q. You published the entire 57 entries in the paper? A. Yes, sir.

Q. What was the cost per entry of publication?

A. Well, I wouldn't be sure. I think it was \$7.50 each.

Q. You got a little reduction by reason of having a large number? A. Yes, sir, I think so.

Q. Did you make a contract with the paper men before you gave them the publication, as to what they would charge you?

A. Well, I am a little mixed up on that reduction business. I know we were talking of re-advertising, and I was trying to get a reduction then. Whether I did on the start, and whether it was \$7.50 or \$10, I am not clear on it. [569—401]

Q. It was one or the other? A. Yes, sir.

Q. Did you republish any of the notices?

A. No, sir.

Q. When did you make payment for that publication, prior to the proof, or afterwards?

A. I cannot say. I think it was afterwards, though, although it might have been prior.

Q. The newspaper man usually insisted on the

(Testimony of Horace G. McKinley.)

payment before he furnished you the proof, didn't he?

A. Well, in some cases I was quite well acquainted with the editors of that paper there, and they might have allowed me to pay it later on or before. I cannot say. I know that I had several cases like that. That is, there have been several notices put in at my direction, and some times I would let the thing go till later.

Q. Well, now, you, together with the people that were assisting you, had attended to all the details up to the time of proof? A. Yes, sir.

Q. Now, then, when the parties proved up in Roseburg, what did you do with them immediately upon proof being submitted?

A. Took a mortgage—proceeded to take a mortgage on each of the claims.

Q. Proceeded to what?

A. Take a mortgage on each of the claims.

Q. Did you take a mortgage?

A. I think so.

Q. What was that for?

A. To secure the amount. [570—402]

Q. Secure what amount?

A. I had paid for the land.

Q. What?

A. That had been paid for the land, and expenses, to the Government, \$75 to themselves, \$100 location fee—from \$75 to \$100 location fee.

Q. You took the same amount of mortgage in each case? A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. The expenses were not the same in every case?

A. No, sir.

Q. The purchase price was not the same in every case?

A. No, sir.

Q. And how many mortgages did you get there at that time?

A. Thirty-three, I think.

Q. Your purpose in taking those mortgages was to secure your location fee?

A. Secure the location fee and secure the amount of money loaned on the land.

Q. Had you loaned any money on the land?

A. I was the agent, yes, sir.

Q. Did you get any location fee?

A. Yes, sir.

Q. Who paid the location fee?

A. Mr. Puter.

Q. You had not located him on any claim, had you?

A. No, sir.

Q. What?

A. Well, yes. Yes, I had.

Q. You located him?

A. That is, he was one of the locators. [571—
403]

Q. He didn't pay you anything, though?

A. That was counted in just the same.

Q. It was?

A. Yes, sir.

Q. And what part of that location fee did you get?

A. One-half.

Q. Who got the other half?

A. Mr. Puter.

Q. You had already, hadn't you, when you took those mortgages, entered into a contract with C. A.

(Testimony of Horace G. McKinley.)

Smith to convey title to him? A. No, sir.

Q. You hadn't? A. No, sir.

Q. Hadn't done that? A. No, sir.

Q. You had agreed with him, however, that you would convey the lands to him?

A. No, sir.

Q. You had not? A. No, sir.

Q. Well, what was the reason that you took deeds on the same day that you took a mortgage?

A. Didn't take any deeds to C. A. Smith.

Q. Whom did you take them to?

A. John A. Willd.

Q. Who was he? A. I don't know.

Q. Did you ever know him? A. No, sir.

Q. Have you ever found out who he was or what he was?

A. I found out he was a live person, living in the east.

Q. And that is all?

A. That is my connection with him. [572—404]

That is all my knowledge of him.

Q. And you didn't know of him in the transaction at all, did you? A. Not personally.

Q. You knew that Fred A. Kribs was there and represented C. A. Smith?

A. I didn't know whom he was representing. I knew, yes.

Q. Oh, well, now, you did know because Mr. Puter had told you.

A. Well, I knew he was representing C. A. Smith. He might have been representing John A. Willd. C.

(Testimony of Horace G. McKinley.)

A. Smith's name might have been coming up incidentally in the matter, and I didn't know but what John A. Willd was close to Smith, and Willd was representing Smith.

Q. You knew the lands were going to Smith?

A. I did not.

Q. You didn't know that?

A. No, sir.

Q. When did you learn that?

A. I don't know it to this day.

Q. You mean by that that you don't know positively and unequivocally?

A. I never followed the chain of title up at all. I don't know whether Smith owns the land now or not, or did then, or whether they was ever transferred to Smith.

Q. What is the reason you took a mortgage and deed on the same day?

A. Well, there was at the time of final proof, the same day, Mr. Puter told me that the lands would be deeded—be deeded to Mr. Willd; that Mr. Kribs was going to buy in that vicinity, and if any of the parties [573—405] that gave the mortgage didn't want to give the deed that that was their privilege; that we could not force them to do it; but if they wanted to clean the thing up, there, if they wanted to give a deed, why, they could do so. As far as the taking of the deed is concerned, I don't recollect very much about that. I was not particular myself whether Mr. Smith, or Mr. Puter sold the lands to Kribs, or Smith. I was interested in the location fee, of \$100. If these parties didn't want to deed over

(Testimony of Horace G. McKinley.)

the land, why, that was their privilege not to; and I think I would just as soon preferred that they did not deed them over to them.

Q. When did you get your \$100 location fee?

A. About that time or shortly after.

Q. Did Kribs pay you that money?

A. No, sir.

Q. Whom did he pay it to?

A. Paid it to Mr. Puter.

Q. Well, what did you do with the deeds immediately when you got them?

A. I gave them to Mr. Puter, those that I got. I don't recollect how many I got.

Q. And that were gotten?

A. And were gotten.

Q. And is this \$3,300 all you got, you and Puter got?

A. No, sir.

Q. What else did you get?

A. We got at the rate of \$5.25 an acre.

Q. That is what you were getting right then and there, isn't it? [574—406]

A. No, sir.

Q. From whoever was taking the land?

A. I didn't get mine out of that last part, I don't think, until quite awhile afterwards.

Q. Nobody else did until after patents were issued?

A. I cannot say as to that. I don't think it was that long, though. There might have been some part of it held out, but there was no such—I think after all the final proofs had been put in, and the transaction closed, I think then that Mr. Kribs paid Mr. Puter and Mr. Puter paid me.

(Testimony of Horace G. McKinley.)

Q. All you had coming?

A. With the exception of a small part that was held out pending the patents being issued.

Q. And you knew right then and there, when you took those deeds that that was the arrangement? You were not getting merely \$100?

A. I knew, yes, when those deeds were given, I knew that the lands were sold.

Q. And you knew that on the 19th day, or the 18th day of April, whatever day it was, the first proofs were made?

A. The day of final proof. Yes, sir, I knew that those proofs that were made that day, at the time the deed was given that the land was to go to Mr. Willd, and that Mr. Kribs was acting as agent for Mr. Willd.

Q. And you didn't know who Willd represented?

A. Didn't know anything about Mr. Willd.

Q. And you knew then that you were going to get \$5.25 an acre for them? A. Yes, sir. [575—407]

Q. And that you were going to get your money from those people, the people that were buying the land?

A. That is where the money would come from. I was doing my business with Mr. Puter.

Q. What was the function, then, of that mortgage there against the entryman himself, when you knew you were going to get your money from a man in Minneapolis?

A. That was the reason, when the mortgage was drawn up, for the purpose of allowing these parties, if any of them wished to go ahead and wait the three

(Testimony of Horace G. McKinley.)

months, and take it up, they had the privilege to do it.

Q. Yes, but when they gave the deed right then and there, what was the purpose?

A. To clean the thing up, if they wanted to deed it.

Q. Didn't you clean it up much nicer if you didn't take any mortgage, but took a deed without any mortgage?

A. That was not according to the arrangement I made with these parties. I made the arrangement with these parties that this mortgage should be taken; they should be allowed a certain time if they wished to sell to other people.

Q. You didn't allow them any time?

A. We didn't force them to take any deeds.

Q. They just came along and took the \$75, and went away?

A. That was up to them.

Q. Didn't have any controversy with any of them about it, did you?

A. I don't think we had any very warm arguments, no. There might have been one or two that refused to do so, and there was two or three that I recollect that did [576—408] refuse.

Q. Who were they?

A. Well, I don't—I can't recall the names, but there were not only one or two, but I think there were half a dozen.

Q. There was John L. Green, wasn't there?

A. I can't recall the names. I know that there was some of them that we took the mortgage and we didn't take the deed, for days afterwards. I think the Albany boys—I don't think we got their deeds—

(Testimony of Horace G. McKinley.)

we didn't get their deeds for four or five days afterwards.

Q. You paid them \$75 though, at the depot that same evening?

A. Yes. And we paid them more money to get the deed later on.

Q. Held you up, some of them?

A. Not particularly.

Q. You got the deed in about two days later?

A. I don't know what time it was. I know they didn't give a deed the day they signed the mortgage. I know the Brownsville boys, none of those gave a deed.

Q. The Brownsville boys, all but the three that were married, did give deeds, at that very day at Roseburg. Don't you remember that?

A. The three that were married didn't.

Q. They had wives; you had to get their wives' signatures before you had the deal completed?

A. I say they were not compelled to. That was up to them if they wanted to.

Q. You understand the contract, whatever arrangement you [577—409] made, was not one that would bind anybody if they didn't want to be bound?

A. Well, yes. That was up to them. They could act as they pleased about it. They had the privilege to sell, or they had the privilege of holding. If they wanted to hold, why, we couldn't stop them.

Q. Now, then, there were 57 entries there, weren't there? A. Yes.

Q. And \$400 was the purchase price of an entry where there was 160 acres? A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. Some of them there was 170 acres in?

A. Yes, sir.

Q. You didn't make any difference in your mortgage on those? A. No, sir.

Q. Some came from Portland here, and others came from Albany? A. Yes, sir.

Q. Some lived in Roseburg?

A. Yes, sir.

Q. Yet your mortgage was \$600 always?

A. Yes, sir.

Q. Well, now, the Land Office fees were about \$10.65, weren't they?

A. I don't know what they were.

Q. And you paid Mealey \$10 on each claim?

A. Yes, sir.

Q. For showing it to you? A. Yes.

Q. You paid him \$100 for cutting trail?

A. Yes.

Q. That would be about \$2 a claim?

A. Yes.

Q. And the expenses of the entrymen from Salem, say, [578—410] to Roseburg, two trips, the total expenses run somewhere around \$30, wouldn't it?

A. I don't know.

Q. What? A. I don't know.

Q. About \$8 fare from Salem to Roseburg, isn't it?

A. Well, I suppose that is what you would have to pay.

Q. Well, what did you pay, then?

A. I got rates.

Q. What is that? A. I got some rates.

(Testimony of Horace G. McKinley.)

Q. What were your rates? A. About half.

Q. One and one-third, wasn't it?

A. I don't know just what it was. I know I got special rates there.

Q. You got excursion rates?

A. Excursion rates.

Q. Which are usually one and one-third?

A. About that. It might have been one and a third. It might have been one-half.

Q. Did you arrange it with the conductor on the train instead of buying the tickets?

A. No, sir.

Q. You bought the tickets? A. Yes, sir.

Q. And you paid each of the entrymen \$75?

A. Some \$75. I guess some of them got \$100— one or two or three.

Q. You paid \$7.50 for publication?

A. Yes, sir.

Q. And some expense of taking an entryman to that land? A. Yes, sir. [579—411]

Q. What did it cost to take an entryman out to that land on an average?

A. Well, I don't know. I would have to figure on that.

Q. What?

A. I would have to get down and figure on that myself.

Q. Cost pretty near \$10, wouldn't it, on an average? All those entrymen? You had to take them the closest was Albany, or Brownsville.

A. Yes, sir, Brownsville was the closest. The furthest was Roseburg.

(Testimony of Horace G. McKinley.)

Q. They would average \$10 easily, wouldn't they—more than that? A. To all of them?

Q. Yes.

A. I don't think they would average that much. There were some—Mrs. Beeman here, she stated that she had been on that land.

Q. And Wilson—you never took him out there?

A. No. There possibly was one or two others—some others. I don't know whether there was or not.

Q. Well, say it would average \$7.50 then.

A. Well, that will allow it.

Q. And your publication fee was \$7.50 more on each entry. That would run the entry up to something like \$540, wouldn't it?

A. How much?

Q. About \$540—\$530 or \$540 to \$550?

A. Well, you have got the figures there.

Q. How is that? [580—412]

A. I say you have the figures there. I don't know whether they are right or not. I wouldn't say as to that. I might figure that down \$20 or \$30. When Mr. Puter and I started in on this, we had the thing figured up that it wouldn't run up to any such sum as that. We hadn't figured at the time of filing anything about the trail, anything about making these three or four trips to Roseburg; and when we started in, with most of the parties, the agreement I had was that the location fee should be in the neighborhood of \$100. If it ran less, than that, we had to pay out the expenses more, as Mr. Puter stated in one of his letters, he thought I could get all the parties from Roseburg, or most of them, and in that

(Testimony of Horace G. McKinley.)

event there wouldn't be any railroad fare up, and he seemed to be disappointed, as the letters show there, that I had to go to outside places. But the way we figured at the time when we first concluded to go into the proposition, was that we would get a location fee of from \$75 to \$100 out of it.

Q. But you said you took that mortgage right there on that last day just to get you that location fee.

A. Yes, sir. Yes, sir.

Q. Well, now, that would give you \$3,300, if you had gotten \$100 on each one?

A. That is what it would, yes, sir.

Q. But you didn't get that much, did you? Some of them you only got \$75 out of?

A. Yes, sir.

Q. Now, then, you had been out \$600 for relinquishments, hadn't you? [581—413]

A. I don't know what the sum was. It would be about, let's see—there were 24—some of the parties, there was a few of them were not paid anything, you know. Meyers and wife, I don't think they got anything out of it. Whether we paid \$25—we might have paid \$10 to some. We might have paid fifteen.

Q. Well, some of them you paid \$50?

A. Well, I don't recollect just those figures.

Q. Well, now, you had paid out, say, \$600 for relinquishments, \$500 to Mealey, \$375 for publication, and \$375 for relinquishments; you had paid \$10.65 apiece, a little more, for 33 entries, fees, making \$350 approximately, and it cost you say \$7.50 to take the people to the land that you did take, anyhow \$300. It had cost you, say, \$15, well, say \$20 to take each entryman to Roseburg twice pay all his ex-

(Testimony of Horace G. McKinley.)

penses, and you took the whole 57 there twice.

A. No, sir.

Q. How many did you lack in taking them there twice?

A. Well, when we had this controversy with the Northern Pacific there, why, those parties did not go down,—I don't know but very few of them did—possibly three or four; but the rest there was no necessity of them going down. We went back and got their relinquishments at Salem, here, and different places.

Q. And some of them you took three times—cost anyhow \$600 to take those men to Roseburg. You had been there at least seven times yourself?

A. Yes.

Q. And it cost you at least \$25 to make the round trip? [582—414]

A. I don't know as it did.

Q. What?

A. It might and it might not. Why would it cost me \$25?

Q. What? A. How would it cost me \$25?

Q. Well, you were living pretty well at that time.

A. Well, you can't charge all that up against the land. I had other deals on hand then, that is, a few of them, that might take me down there.

Q. You took Dan down there at least four times?

A. Yes.

Q. That is, say \$20 a trip, round trip.

A. All right.

Q. Now, we will see how much money you would have out of your \$3,300. That would be \$3,320, without paying Bas. or Dan anything, without paying

(Testimony of Horace G. McKinley.)

your attorney that represented the Northern Pacific Railroad Company down there. A. Yes.

Q. You were losing quite a lot of money on the deal? A. Yes, sir.

Q. Still you took those mortgages there in order to secure you that location fee.

A. Yes, that is what I did.

Q. And that is all you were looking for at the time?

A. At the time of filing, yes, sir. We had no idea those expenses were going to run up to \$3,320. There was a whole lot of expense in there that we never figured [583—415] on at all. We figured on clearing at least \$5,000 when we went into it.

Q. \$5,000? A. Yes, sir.

Q. How were you going to clear that \$5,000?

A. On 57 quarter sections.

Q. That would be \$5,700? You had agreed to pay Mealey \$400 to begin with.

A. Well, all right.

Q. You knew how much it would cost to take an entryman to the land, didn't you? A. Yes.

Q. There would be \$570 there?

A. Yes, sir.

Q. You knew there was \$10 and a little over expense at the Land Office. There is \$570 more?

A. Yes. We figured on the expenses being possibly \$400 to \$435—around there—which ordinarily it would be.

Q. \$430 at the Land Office? A. Yes.

Q. Let alone taking a man to the land, and publishing his notice, \$7.50 for notice too.

(Testimony of Horace G. McKinley.)

A. Yes.

Q. Made another \$400? A. Yes.

Q. So you couldn't have ever figured on any \$5,700.

A. Yes. Well, now, wait. You are going too fast in your figuring. Some of these people at the time we only agreed to pay them \$50; that is, advance them \$50, at the time of final proof. I can sit down and figure where I can take a claim up in any part of that country there for \$435. [584—416]

Q. What difference would the amount you were going to advance make upon your location fee?

A. Make all the difference in the world.

Q. If you were going to borrow the money from somebody else, and were not going to put it up?

A. Well, we might be able to borrow \$600 where we could not borrow \$800.

Q. You never told the entrymen you were going to borrow \$600, or keep any part of it, except your location fee. If you only advanced the entrymen \$50 apiece, then your mortgage would be reduced by \$50, because you were only going to take your actual expenses there? That is what you told the entrymen, wasn't it?

A. No. If we gave the entrymen \$50, we would get a location fee of \$125.

Q. You never told the entrymen anything about \$600?

A. Yes, I did. I told a great many entrymen about that \$600 mortgage.

Q. When? About the time they signed it?

A. No, sir. No, sir, at the time when I first

(Testimony of Horace G. McKinley.)

entered into an arrangement with them. I won't say that I did all.

Q. What were you going to give them \$75 for?

A. Advance them that much for their time and expenses that they might have been out a little bit, outside what I was out.

Q. What advantage were they going to get out of the transaction?

A. They would be sure of getting \$75.

Q. They were going to get \$75?

A. Yes, sir. [585—417]

Q. The land was no inducement to them?

A. I don't know.

Q. You used the \$75 as an inducement?

A. Yes, sir.

Q. You told them they would get that at the time of final proof? A. Yes, sir. Yes, sir.

Q. Now, the purpose of putting that mortgage at 90 days was to get the land quick, wasn't it?

A. Well, 90 days is a long time.

Q. For a mortgage?

A. Why, certainly. I can sell a lot of land in 90 days.

Q. Of course you can. That is what you wanted it for, so you could turn the title quick.

A. Yes, sir.

Q. You wanted the title available?

A. We didn't want a mortgage to run six years. I will admit that.

Q. If you were only looking for the location fee, what did you care about the time the mortgage ran?

A. This location fee—I was looking at the propo-

(Testimony of Horace G. McKinley.)

sition different at the time these parties filed and at the day they proved up. Now, you have got there—there is \$3,320. That allows \$20 off the deal closed right there, and they took this \$600 mortgage and went and sold to somebody else. They would pay us back this \$600—we would be at a loss. When we saw we were coming out, and all this expense was being charged up against us, and we would lose \$20—of course, we didn't know just how much—then it came into our mind we better sell, if we could get more for the land, [586—418] in order to make that up.

Q. Puter was talking sell from the very day he struck the train at Portland.

A. If he was, I was not talking sell. You will have to get that from Mr. Puter. I was talking sell along toward the last, round there, and up to one week before the land was sold, I was talking sell then to people in the east, and for more than \$5.00 an acre.

Q. You gave Puter a lot of letters of introduction to people in the east as he left here, didn't you?

A. Yes, sir.

Q. To people that he would approach, who were timber men?

A. Yes, sir, approach as to getting money, to furnish the money for final proof, yes, sir.

Q. And you approached timber dealers, men who were dealing in timber.

A. Yes, on the proposition.

Q. Men who were not money lenders, but they were timber buyers.

(Testimony of Horace G. McKinley.)

A. And money loaners also.

Q. Who were money loaners?

A. R. J. Shields of West Superior was one money loaner, and timber buyer, that was approached on the matter—vice-president of the bank there.

Q. Where did he loan money?

A. On timber lands generally.

Q. Where? A. Wisconsin.

Q. Never loaned any in Oregon?

A. Not to my knowledge. [587—419]

Q. Did he ever buy any in Oregon?

A. Not to my knowledge, no, sir. But the proposition was put up to him as a straight loan.

Q. Of the money? A. Yes, sir.

Q. Now, then, do you want this court to understand that that mortgage that you took upon that day that you took a deed, was to secure your location fee? That was one purpose of it?

A. That was one of the purposes, yes, sir. There were other purposes.

Q. What were the other purposes?

A. To allow these parties to sell to whoever they pleased.

Q. How could you allow them to sell if you took a deed simultaneously with the mortgage?

A. That was up to them. If they wanted to go out all right; if they didn't want to go out, all right.

Q. But they gave it?

A. In most cases. Some cases they did not. Some of them wanted to sell. Some of them looked for a buyer afterwards.

Q. There was along about ten out of the whole

(Testimony of Horace G. McKinley.)

bunch that didn't give a deed the very day they gave the mortgage?

A. The rest wanted to clean it up then, I suppose, if they thought anything about it.

Q. Why didn't you take a deed and clean it up? Why did you take a mortgage?

A. That was agreed, the mortgage. I wanted to give them an opportunity.

Q. But you didn't give them any opportunity?
[588—420]

A. I did give them an opportunity.

Q. You says here now we will take a mortgage, here is a deed? A. Yes.

Q. Handed them both out. What opportunity did the man have?

A. If a man thought anything about it, if he wanted to find another buyer, he knew a deed from a mortgage.

Q. You had him there. When the man said: "I will sign a deed," why did you have him sign a mortgage too? A. Did he have to sign a deed?

Q. Yes, but he says to you, "I will sign a deed."

A. That is up to him.

Q. Why did you have him sign a mortgage, then?

A. Suppose he says, "I won't sign a deed."

Q. He didn't say it.

A. I don't know why he didn't. He had an opportunity.

Q. What was the use of your cumbering the record, and cumbering your affairs with a mortgage that had no effect, that a man had given a deed simultaneously with it, both made on the same date,

(Testimony of Horace G. McKinley.)

at the same time, in the same transaction?

A. Well, the arrangement was made that he should do that.

Q. Yes, I know, but why, for instance, you had one of these fellows—take any of them, for instance?

A. Yes.

Q. You had him down there in that room, somewhere there in the Land Office? A. Yes.

Q. And you have got a mortgage and a deed all ready for him? A. Yes. [589—421]

Q. And you say, “Here is a mortgage and here is a deed. Do you want to sign the deed”? He says, yes. Well, why didn’t you throw the mortgage into the waste basket and have him sign the deed? Why did you have him sign both?

A. That could have been done.

Q. You didn’t do it?

A. Maybe I haven’t got a reason why we didn’t do it. It could have been done. I don’t know why we didn’t do it.

Q. Wasn’t the purpose to put a mortgage on the record and make it appear that the man who was putting up the money, paying the money over there at the Land Office, was loaning the money instead of buying the land?

A. I don’t know as that was the purpose of it. We had the mortgages all made out, and our plan was to have them mortgage that land. That was right, yes. Those that wanted to sell that same time after they mortgaged the land, the deed was right there for them to sign. If they made objection against signing the deed, why, we could not force

(Testimony of Horace G. McKinley.)

them to sign it at all.

Q. But you took a mortgage in each and every case, and placed it on record, didn't you?

A. Well, that is just the arrangement we had.

Q. It was a likely method of concealing the real transaction, wasn't it, that the man had deeded immediately upon conveying the land.

A. I don't think we figured on concealing the transaction, Mr. McCourt. I don't think we gave it any thought about concealing it. We thought it was a legitimate proposition. I don't know why we would want to conceal it. [590—422] But why I would think there was given a mortgage, they just gave it—that was all. They signed the deed there, but they had an opportunity of refusing to sign the the deed, and going ahead and finding another buyer if they could.

Q. Every man that you approached, you told him there would be \$75 in it? A. Yes. That is—

Q. Then, when you approached a sufficient number to satisfy you, in that way, and who had agreed to it, you took them to Roseburg? You told them when to go to Roseburg, didn't you?

A. Yes, sir.

Q. And you took them and paid their fare?

A. Me, and that is—

Q. And you placed them in a hotel at your direction when you got to Roseburg?

A. Yes, sir.

Q. And you piloted them to the Land Office and had them file? A. Yes, sir.

Q. And you paid their hotel bill and brought

(Testimony of Horace G. McKinley.)

them back? A. Yes.

Q. Most of them you took to the land, either on that same trip or at another trip? A. Yes.

Q. Paying all expenses and looking after them yourself? A. Yes, sir.

Q. Or having Dan Tarpley or Bas Wagner do it?

A. Yes, sir.

Q. Paid their expenses back to their residence?

A. Yes. [591—423]

Q. Had the notice published? A. Yes.

Q. Charged to you and paid by you?

A. Yes, sir.

Q. Then later you went around and told them it was time to make proof? A. Yes, sir.

Q. Told them to be ready and where to be ready?

A. Yes, sir.

Q. Placed them on the train and paid the fare?

A. Yes, sir.

Q. Sent them again to the hotel with which you had an arrangement? A. Yes, sir.

Q. To take care of parties brought there by you?

A. Yes, sir.

Q. At your expense? A. Yes, sir.

Q. Then you made the proof? A. Yes.

Q. Eliminating for a moment the contest and the trouble that you had between times?

A. Yes, sir.

Q. As soon as they had proved up they got that same \$75 you had promised them in the beginning?

A. Yes, sir.

Q. You took a mortgage and a deed?

A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. From all except a few of the married persons whose wives were not there?

A. Well, they were not all married persons.

Q. Well, there was a couple up there at Albany, who were not married, whose deeds you got later, two or three, probably?

A. Well, I don't know; there might have been some others. [592—424]

Q. Well, now, you didn't have a thing to do with those entrymen after that moment until the trouble came up where Stratford appeared as a Government agent?

A. No, sir.

Q. When did you first meet C. A. Smith?

A. I cannot give the exact date. Some time in the year 1900.

Q. Did you see him there on May 20th, when he was at Albany or Roseburg—Albany?

A. No, sir. The first time I saw him was after July, 1900.

Q. Where did you meet him?

A. I think I met him in California, or on the boat going from San Francisco to Eureka; but I wouldn't be positive. It was some time, I remember meeting him late in the summer.

Q. Were you interested in that redwood deal between Puter and him there in Humboldt County?

A. No, sir, not at all.

Q. Representing Puter in it in any way?

A. No, sir.

Q. Aiding Puter in it? A. No, sir.

Q. Did you go on the boat from San Francisco to Eureka with Smith?

(Testimony of Horace G. McKinley.)

A. Merely on a little pleasure trip with Mr. Puter.

Q. And who besides Smith were in the party and yourself and Puter?

A. Well, I couldn't say. I would have to go back a little. I would not say that Smith was on that boat. But it is the best of my recollection that I either met him in [593—425] San Francisco or on the boat. But if it was on the boat my talk was just: "How do you do, Mr. Smith," and introduced to him. But I have no recollection of even talking to him.

Q. Did you ever visit that timber out in 14-2, 3 and 4 with him? A. No, sir.

Q. Since that time, or at any time?

A. No, sir. Never met him but twice in my life.

Q. You were not at Albany on May 20th when he came there?

A. No, sir. If I was, I didn't see him.

Q. Now then, the transactions occurring between Smith and Kribs with relation to the purchase of these timber lands was conducted by Puter, was it not, in behalf of you and Puter?

A. Well, the purchase of the lands by Kribs and Willd. I don't know anything about Smith purchasing the lands.

Q. Oh, yes, you are injecting Willd in there. You never knew Willd.

A. I don't know Smith. As I say, I don't know whether Smith ever purchased the lands or not. I have heard that Kribs was acting as Smith's agent. But, as far as Smith getting in and doing any pur-

(Testimony of Horace G. McKinley.)

chasing from Puter, I don't know.

Q. You knew that you and Puter, and had understood Smith was the man that was buying the lands, and you always talked Smith between you as to those lands?

A. I don't know as we did. We talked Kribs between us. Puter had dealings with Smith, I guess, all right enough, but I did not. [594—426]

Q. You knew that the same interests that were furnishing the money to make final payments were furnishing the money to purchase the land?

A. At what time?

Q. At the very time the deeds and mortgages were made. A. Yes, indeed I did.

Q. Did you understand why they were taking the mortgage to one man and the deed to another in the same interest, the same parties being interested all the while?

A. I got my directions from Mr. Puter as to that.

Q. He told you that was the way they wanted it done?

A. He said any deeds that should be taken should go to Mr. Willd, yes, sir.

Q. He didn't explain to you why?

A. No, sir.

Q. And you didn't stop to inquire why?

A. I might have at the time, but I don't recollect. I was kind of following along his directions there—instructions.

Q. Will you refer to your diary there, and see where you were from May 14th to May 31st.

A. I haven't any note here on May 14th. I have

(Testimony of Horace G. McKinley.)

the 15th, from then on.

Q. All right.

A. The 15th I went to Roseburg on the night train. The 16th proved up on 14 claims; left at night for Albany; on the 17th, stopped off at Albany for deeds; came to Salem in the afternoon; the 18th came to Portland in the afternoon; the 19th in Portland; the 20th in Portland; and I know from what is mentioned here, at the 20th, that I was here the 21st.
[595—427]

Q. In Portland? A. Yes, sir.

Q. Where were you on the 22d?

A. Well, I have three or four days here I have no notes on at all.

Q. You had taken a little flyer about that time?

A. I might have been.

Q. And that computation I was making there, the expense of Puter's trips east, was not taken into consideration was it?

A. No; but Mr. Puter had other matters to attend to there in the east also. He could not charge that entirely up to the land, if he was doing that.

Q. No, but some of it should have been charged to the land?

A. Well, possibly, yes. He was selling some other lands for me at that time, and was making special trips east to sell lands for me.

Q. You and Puter had other land transactions at that time?

A. We had one other land transaction on hand at that time, yes, sir.

(Testimony of Horace G. McKinley.)

Q. You and he had been dealing quite extensively prior to that time in school lands in Oregon?

A. School lands and Government lands, yes, sir.

[596—428]

Q. You usually kept on hand a large batch of applications or certificates—school certificates?

A. Yes, sir.

Q. Subject to assignment by endorsement?

A. Yes, sir.

Q. Under seal? A. Yes, sir.

Q. I hand you a letter dated November 6, 1901, written from Minneapolis, Minnesota, and ask you in whose handwriting it is. A. Mr. Puter's.

Q. Was that letter received by you from him in due course of mail? A. Yes, sir.

Marked "U. S. Exhibit 110 for Identification."

Q. I hand you a letter dated February 15th, Milwaukee, Wisconsin, February 15, 1902. Was that written to you by Mr. Puter? A. Yes.

Q. And received by you in due course of mail?

A. Yes, sir.

Marked "U. S. Exhibit 111 for Identification."

Q. I also hand you a letter dated March 1, 1902, and ask you if you received that from Mr. Puter in due course of mail? A. Yes, sir.

Marked "U. S. Exhibit 112 for Identification."

Q. I also hand you a letter dated November 7, 1901, and ask you if you received that in due course of mail from Mr. Puter,—Minneapolis, Minnesota, November 7, 1901? A. Yes.

Mr. LIND.—11—7; what does that mean?

(Testimony of Horace G. McKinley.)

A. November 7th. [597—429]

Mr. McCOURT.—November 7th. Mr. McKinley is an expert on 11—7 if you want to know.

Marked “U. S. Exhibit 113 for Identification.”

Cross-examination.

(Questions by Mr. LIND.)

You just identified those letters?

Mr. McCOURT.—Yes, I just identified them. I want them there so when I call some other witness I can call his attention to them.

Q. Prior to the time that you entered into this arrangement, of which you testified, with Mr. Puter, what had been your business, Mr. McKinley?

A. Dealing in timber lands, buying and selling, locating parties on timber lands.

Q. What do you mean by locating parties on timber land?

A. Furnishing the data, such as the description, taking parties up on the land. For instance, a man wants to take up a quarter section of timber land from the Government or any other kind of land, go and show him the corners, go over the timber, charging him a fee for it—the information.

Q. Is a man engaged in that kind of business—they usually are called locators, are they?

A. Yes, sir.

Q. Is it the custom that the locator looks after all the business of the entrymen pertaining to the making and perfection of the entry?

A. That—in some cases, yes. That depends a good deal on circumstances.

(Testimony of Horace G. McKinley.)

Q. What was your custom in that regard?

Mr. McCOURT.—I object to his custom being shown

COURT.—I suppose counsel wants to show the general [598—430] practice of Mr. McKinley as it may bear on his actions in this case.

A. What was that question again, there, please?

Q. (Read.)

A. Well, I would generally take the parties on the lands in most cases, make arrangements with the newspapers, their filing—or their advertising notices, perhaps accompany him to Roseburg, help make out their papers there, both at filing and final proof perhaps. In other cases I would merely give them the numbers maybe, and they would go up and look at the land themselves; or I might have an agent or a helper who would show them on the land.

Q. Now, who conducted the business with the entrymen in the cases involved in this action—you or Mr. Puter? I mean prior to final proof?

A. Mr. Tarpley and myself did in nearly all cases. I think there were four cases that Mr. Puter—that is, at the time of filing.

Q. What four cases were those?

A. Mr. and Mrs. S. A. D. Puter, Mrs. Jacobs and her daughter, Elmira Jacobs.

Q. All the rest were conducted by you?

A. Yes, sir.

Q. And with your—and Mr. Tarpley?

A. Yes, sir.

Q. What about the Beeman claim?

(Testimony of Horace G. McKinley.)

A. I attended to that.

Q. With whom did you make your arrangements in that instance? A. Mr. Beeman.

Q. Wholly? A. Yes, sir.

Q. Who was Mr. Beeman?

A. Well, he told me at the time that he had located himself some few— [599—431]

Q. I say, who was he? He was supposed to be the husband of the witness Beeman?

A. Yes, sir; yes, sir.

Q. You may state—you may state what you stated to Mr. Beeman with regard to the compensation you would give him if he found entrymen who were willing to be located by you?

A. Mr. Beeman first wrote me a letter at the Revere House, with a one cent stamp on it, I think. I think he was in the city at the time. He called to see me, but I was out, and he wrote a letter saying he wished to see me. Well, I met him and he told me he was familiar with the country up there, and also Mrs. Beeman, through that; she had been up there on different occasions. And this was some time after I had taken parties from Albany to Roseburg or from Salem to Roseburg, I don't remember which. But he asked me what the arrangement was and if his wife could get in and take up a claim under that arrangement, and I told him yes, that his wife could, and explained to him about the arrangement, the same as the other. And I further told him that any one he got, why, that I would pay him \$5.00 for each person that he secured.

(Testimony of Horace G. McKinley.)

Q. Did you ever say to anyone that you would pay a larger sum than \$5.00 for introducing you to the prospective entrymen? A. I did not.

Q. In bringing a prospective entryman to you?

A. I did not.

Q. Did you ever pay any more to anyone?

A. I don't remember of even paying that to anyone, but I think in one or two instances that I did say—that I would pay them; and I might have in one or two instances paid it. [600—432] I think down at Roseburg one of the boys there went and secured a fellow there and I did pay him \$5.00 extra, but I don't recollect who.

Q. Now, what was the actual arrangement between you and the entrymen who filed on those claims? What was the talk, the understanding between you? Give the Court in your own language just exactly what you said to the entrymen and—

A. Well, that—that talk varied a little in cases. Now, there would be like in the case of Mr. Wilson there—I had known him a long time and if I should happen to be a little rushed—if I happened to be at the time—

Q. Why were you in a rush at all?

A. I had other business on hands of a different nature, and I was in a hurry on account of those Northern Pacific people being up in there and I knew this was a rush matter. A delay *or* a day or two might mean that it would knock us out, perhaps, of this proposition, and for that reason, why, I was con-

(Testimony of Horace G. McKinley.)

siderably rushed all the way along at the time of the entry.

Q. What did you say to Mr. Wilson, for instance?

A. Well, I suppose according—I heard his testimony on the stand here, and I think he is right—I might have said, “You go on down and use your timber right,” and he would go. I would say, “I have a piece of timber here. You go down and file on it and you can make some money on it. I will act as your agent in the matter and help you all I can and you will get \$75 anyway,” and let it go at that and say nothing further about it. There might have been that arrangement made with two or three other parties that I knew well, and I would not go into the details. There were other cases where I would explain about this mortgage. [601—433]

Q. What was your plan that you had outlined in your own mind that you were working on in the location of these entrymen and for the purpose of acquiring this land?

A. Until the time when this first— when we first went into the proposition and made the arrangement with Mr. Puter, which we talked over thoroughly here that night that I came down to see him, and went into the question of expenses, about what it would cost, what we could make out of it, and the location of the timber as to our being able to handle it later on and rehandle it, we did discuss that. I remember that. I say, we went into it merely for the location fee. We had this in view later on in life sometime, five years later, maybe, we could re-

(Testimony of Horace G. McKinley.)

handle the same and make some money, but at that particular time when we was talking of it then we was to put up this purchase money ourselves there—they thought we were—we would file these people on the land, agree to advance them \$75, put in \$100 location fee—from \$75 to \$100 as we figured it out—\$425 or \$435, I think it would cost to obtain title to the land from the Government, and sum it up all around it would be about \$600, so we called it \$600 and Mr. Puter himself told me to go and see these parties and get them under that arrangement; and acting along these lines I did that and told a great many of the entrymen that we would take a mortgage for \$600; but in no instance—they can't say so nor no one else—was ever anything said at the time of entry that they should deed the lands over to me or sell them to me or anyone else.

Q. As a matter of fact, Mr. McKinley, you expected that these lands would be for sale and that you could handle them after proof and patent, didn't you? Did you or didn't you? [602—434]

A. Knew they would be for sale, but as for myself handling them that was merely chance. I might be able and some other man might step in at the right moment—

Q. Didn't you know, I want you to be perfectly frank and candid with the Court—didn't you expect, by reason of the arrangement, that you would probably have the handling and the selling of these lands and the profit there was in them?

A. Yes, yes, I can say I did. I can say I did.

(Testimony of Horace G. McKinley.)

Q. Didn't you really feel that, notwithstanding there was no talk about a sale or anything of that kind—notwithstanding that fact, in the natural course of events, this title would be disposed of by you eventually?

A. Yes, I did. I understood that for several good reasons.

Q. Well, what—

A. These men were—I was acquainted with them, knew the locality of timber, knew who owned the timber on the north, east and the south, I had sold myself hundreds of thousands of acres—two whole townships south of those, tracts to my people back east, and I thought I would have the first chance. They would naturally give me, as I went ahead and allowed them to make some money out of it, if I would be fair with them all the way through, they would naturally give me the first, the preference right, if the lands were for sale; that when they came to talk sale they would give me the preference right in place of some outsider, to handle the lands, and if they did I thought I was in position, buying and selling at that time and dealing quite largely—that I could find a buyer either with my people in La Crosse, Wisconsin, or anyone outside.

Q. When did it first become a matter of discussion between you and Puter to take the deeds at the time of proof, or as [603—435] soon as you could get the deeds—as soon as they could be obtained?

A. On the day of proof. The day when the

(Testimony of Horace G. McKinley.)

parties—the first parties proved up.

Q. Puter met you? A. Yes, sir.

Q. Which way did he come from when he met you at Roseburg at the time of final proof? Had you seen him previous to meeting him at Roseburg, or did you just meet him at Roseburg?

A. I don't recall as to that.

Q. Can you tell by reference to your memorandum?

A. You mean, did we go to Roseburg together?

Q. Yes.

A. Or did we come from opposite directions?

Q. Or did he come up from California? He was in California a great deal at that time, was he not?

A. Yes.

Q. Or rather, away from Portland?

A. Yes, he was away from town, east and California, around.

Q. What I want to get at, is whether you had had any conference or understanding with Mr. Puter prior to April 16th with regard to the method of proving up and handling these claims, except such as you had in the first instance?

A. Nothing definite at all. We might have had in an indefinite way—might have talked this over.

Q. Talked what over? Give us your best recollection.

A. As regards deeding this land, possibly to Mr. Kribs afterwards; but there was nothing definite arrived at at all.

Q. When did Mr. Puter—when did Mr. Puter tell

(Testimony of Horace G. McKinley.)

you that Mr. Kribs, if you recall, was willing to take in his own [604—436] behalf, or in the behalf of some one, that land at a certain figure?

A. Well, to the very best of my recollection it was the day of final proof.

Q. Had you ever heard of Kribs? When did you first hear the name of Kribs spoken so far as you know, or when was it first suggested?

A. In the letters as read here yesterday where mention was made of Mr. Kribs.

Q. You never heard of Kribs prior to that time?

A. Never heard of Smith or Kribs, no, sir—C. A. Smith.

Q. You never heard of C. A. Smith prior to that time?

A. No, I didn't hear of him even at that time.

Q. Do you recollect approximately, when you first heard of C. A. Smith?

A. Well, I say I didn't hear of him. I didn't—I will have to correct that, because I heard of Smith as it states in those letters. I don't know whether the letter is at the same time, but it wasn't previous I am sure.

Q. That is the first—

A. That is the first I had—was through Mr. Puter as mentioned in those letters.

Q. In a letter of March 8th from Puter to yourself, there was this language: "In case that man Goddard is there, why don't you take him out on 14-2 and 3." What did you understand that to mean?

A. That anyone I could take out and show that

(Testimony of Horace G. McKinley.)

land and make a bargain with as to furnishing the money for final proof, that I should do so. That was my understanding with Puter all the time and I was working independent of him to find someone who would do that.

Q. Did you know this man Goddard? [605—437]

A. Yes, sir.

Q. Or know of him? A. Yes, sir.

Q. Who is he and where was he from?

A. A capitalist from La Crosse, Wisconsin, and a large owner of timber land in this country.

Q. Then in a later letter, Mr. Puter suggests to you that Ike Stevenson might come up from Portland to look at these lands? A. Yes, sir.

Q. In a letter in evidence dated Sunday, February 18, 1900, there is this language. "I only seen one man there and told him all about it and to say nothing, for he is a man that understands all about the business and has lots of money. His name is I. S. Stevens, of Saginaw, Michigan, and he is in Portland now. I have known him a long time. I was to take him on the land and if it was all right Stevens was to handle the business, when it came to proving up." Did you know anything about this man? Did you have any correspondence with this man Stevens? A. No, sir.

Q. Was that with reference to these lands in suit?

A. Yes, sir.

Q. "So that man Huntington went right to my man back there and offered him the same land at

(Testimony of Horace G. McKinley.)

\$5.00 per acre; I have been holding it at \$7.50.” Does that refer to these same claims that had been filed on?

A. I think it does, yes, sir.

Q. Then it says: “My man’s name is McClure of Duluth.” Is that another man that Mr Puter looked on as a possible customer for these lands?

A. Yes, sir. [606—438]

Q. When proved up on? A. Yes, sir.

Q. Do you know about him—McClure?

A. I don’t know the man any more than just through the correspondence. Know nothing about it only through the correspondence as outlined in the letter there.

Q. Did you—what other parties, if any, did you look to to get the money for proving up on these claims?

A. N. H. Withee of La Crosse, Wisconsin.

Q. When Puter went East on one of these trips did you write a letter of introduction to Puter—to Withee? A. Yes, sir.

Q. Did Withee consider it—consider the furnishing of the money for proving up on these claims?

A. Yes, sir.

Q. And finally wired you from New York, as indicated in the correspondence, that he would not furnish the money? A. Yes, sir.

Q. What others, if any?

A. Mr. E. L. Hanton.

Q. Who was he?

A. He was a—at that time he was dealing in tim-

(Testimony of Horace G. McKinley.)

ber and iron lands at Superior, West Superior, Wisconsin.

Q. Did you write him yourself?

A. Several letters. I had quite a lot of correspondence.

Q. During that period did you correspond with him with a view of interesting him to furnish the money to make the proof in this case?

A. January, February, March and April.

Q. As late as April?

A. Yes, sir. Now wait—pardon me a moment. The correspondence I had with him in April was nothing definite. I wrote [607—439] him that the proposition in a way was still open, but it was under advisement by different parties, or other parties, as to furnishing the money, but that the lands—later on I would take the matter up as regards selling them to him.

Mr. McCOURT.—I move to strike that out as not the best evidence of that correspondence.

Q. Have you the letters or a copy of them?

A. I have some of his letters.

Q. Have you a copy of your letters to him?

A. My letter to him?

Q. Yes.

A. I haven't it with me. I don't know whether I have a copy or not. All I have is a statement from him and that is merely a copy of it, but I haven't a copy of the correspondence, no, sir.

Mr. LIND.—Of course, it is within the discretion of the Court. The reason I asked was to develop the state of the mind of this witness at the time.

(Testimony of Horace G. McKinley.)

COURT.—I see the purpose of the examination, but of course the contents of the letter is not competent.

Q. Now, at the time of the arrest referred to in your testimony of yesterday, before whom were you examined?

A. The United States Commissioner at Albany.

Q. What was his name? A. Montanye.

Q. How long did that examination last?

A. About two hours, I think—possibly less.

Q. Were you sworn as a witness?

A. I don't think so, no, sir.

Q. Were others sworn?

A. I think there were one or two witnesses sworn.

Q. What was the result of the examination?

A. The case was dismissed against me.

Q. And you were discharged?

A. Yes, sir. [608—440]

Q. What was the date of that hearing, if you recall—about April—

A. I can't fix the date. I have omitted it in my notes here. I can't recall.

Q. About April 1st—April 1st?

A. I was arrested the first day of April. I always remember that, because I thought it was a joke at the start, and I think—

Q. Now, how long did the hearings continue in the local Land Office at Roseburg in the contests instituted by the Northern Pacific Railroad Company or its agents against some of those entrymen?

A. I think there were two entrymen placed on the

(Testimony of Horace G. McKinley.)

stand. It continued about two days, if I recollect right.

Q. Was any final action taken by the officers of the Land Office upon the testimony so taken?

A. No, sir, the proceedings seemed to stop after they had placed a second man on the stand there, pending negotiations being considered by the Northern Pacific Railroad Company and other parties.

Q. Was there a Government agent, a special land agent present at the time of that hearing in the Land Office?

A. I don't remember any Special Agent; there might have been one there. It might have been a Special Agent conducted the hearing, but I can't recollect if there was. I remember the Northern Pacific had their men there, in full force.

Q. What other methods were there of acquiring public lands in the Roseburg district in this State at the time? I mean, land of the character of those in question, other than filings under the Timber and Stone Act?

Mr. McCOURT.—I object to that as calling for a question [609—441] of law or asking his opinion as to the law.

COURT.—Well, it has been assumed in your examination that there was a method of filing scrip.

A. Well, there were three other ways where land—at that time land of that character was being acquired from the Government. One was under the Pre-emption Law. I don't think that that was repealed at that time. One was the Homestead Law, and the other was by placing scrip on lands—both

(Testimony of Horace G. McKinley.)

Government and State scrip.

Q. State scrip on State lands, you mean?

A. No, we could use State scrip on Government lands.

Q. You mean by "State"—

A. Indemnity—indemnity State—school lands, yes, sir.

Q. Were you familiar with those methods of acquiring public land? A. Yes, sir.

Q. Had you made scrip locations prior to that time? A. Yes, sir.

Q. Only a few or a great many?

A. A great many, especially of State.

Q. Running into the thousand acres?

A. Thousand acres—yes, sir, many thousands of acres.

Q. At the time these lands were entered and proved up on, did you have scrip?

A. How do you mean "have it"?

Q. Did you own scrip?

A. No, I didn't own any.

Q. Was scrip handled by dealers? Was it for sale?

A. Yes, sir, in large quantities—in any quantity.

Q. Here at Portland?

A. Portland—all over the northwest and in the east. [610—442]

Q. And at Albany—in the banks? Was it handled usually in the banks?

A. Generally through the banks, yes, sir; that is, Government scrip.

Q. I am talking now of Government scrip.

(Testimony of Horace G. McKinley.)

A. Yes.

Q. The Northern Pacific and the lieu land scrip?

A. Yes, sir.

Q. And the Santa Fe scrip? A. Yes, sir.

Q. Black Mountain, I think, was the name of one variety of scrip? A. I think so, yes.

Q. What was the market value of this scrip at that time, if you know?

A. Well, it generally varied—all that class of scrip. Of course there are several different kinds of scrip.

Q. Well, there are scrips located on unsurveyed lands? A. Yes.

Q. They command a higher price?

A. Not at that—I don't think at that time they did. I don't think at that time. There was a law that was repealed later on, but at that time most scrip would take unsurveyed lands; but I am not sure as to the dates of that. But the average market price of scrip that could be used on these particular lands at that time would be from \$3 to \$3.50 per acre. Just as the owner—

Q. Wasn't it sold at that time as cheaply as \$2.75 in large quantities?

A. Not Government scrip, no, sir.

Q. What about State scrip?

A. State scrip was sold all the way from \$1.50 up to \$3.00 per acre. It generally come a little under Government scrip. [611—443]

Q. And that could have been used with a little more trouble on these same lands, could it not?

A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. Were those the prices during January, February, March, April and May, 1900?

A. Well, I—you are talking of State and Government as I have said here?

Q. Yes.

A. Yes, State scrip. Well, I was offered State scrip at \$2.75. I remember that. The Government scrip I was offered at that time for \$3.50—either \$3.25 or \$3.50, by Chicago people.

Q. Now, the acquisition of public lands by scrip locations was the most expeditious way of acquiring title from the Government, was it not?

A. Yes, sir.

Q. If you wanted to obtain absolute title quickly from the Government, that was the way, was it not?

A. Yes, sir.

Q. Did you, in any conversation that you ever had with Mr. Kribs prior to the final proof in these cases, state or intimate to him that there was anything irregular or fraudulent in regard to these entries involved in this suit?

A. No, sir, I did not.

Mr. McCOURT.—Up to when?

Mr. LIND.—Up to the time of final proof.

Q. If you did say anything, what did you say?

A. I didn't have any talk with him at all.

Q. On that subject? A. On that subject.

Redirect Examination.

Q. He knew of your arrest and of the contest for the proof before he put up any money on this thing?

[612—444]

A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. What say? A. Yes, sir.

Q. Now, you—he knew, he was there, and knew of the negotiations pending between you and the Northern Pacific people for a settlement of your controversy with them?

A. I don't know whether he was or not.

Q. He was right around there at the time, waiting to put up that money?

A. The chances are he knew of it. I don't know whether he was there or not.

Q. Now, you say you usually took the parties on the land? A. Yes, sir.

Q. And you located for a fee? A. Yes, sir.

Q. Where did you ever locate any for a fee?

A. Several parts of the State.

Q. Where?

A. 16 South, 7 West; 16 South, 2 West; 15 South, 2 West; 15 South, 1 and 2 East; 26 South, 13 West, Washington.

Q. Who ever paid you \$100 or any other location fee?

A. I can mention a whole lot of them.

Q. Isn't it a fact all the land you ever located, practically all of them, that they were taken over after final proof by you or some people interested with you or who you were representing?

A. People I located?

Q. Yes.

A. No, sir. It is not such a fact.

Q. Isn't it a fact that the bulk of the land went to people who were represented by you?

A. I would say possibly three-fourths of them.

(Testimony of Horace G. McKinley.)

Q. Even five-sixths of them?

A. No, I have done a lot of locating in the 20 years I [613—445] have been here. I have located a great many people where I did not get the lands at all; merely for the straight fee in them.

Q. Name some of them?

A. Miss Rose Henderson, Cyrus Deuey.

Q. Where are they?

A. In Wisconsin. They came out here and I located them. One person in Portland here now.

Q. Who else?

A. Four or five from Eugene.

Q. Who? A. Guy Huff.

Q. Oh. A. Yes.

Q. Who else?

A. A girl by the name of Nellie Gilbert, E. K. Brown—I did not get their lands. I located them and got a fee for it.

Q. What name did you locate Nellie Gilbert under up there in 11—7?

Mr. LIND.—That, your Honor, is immaterial. I object as irrelevant and incompetent, if it tends to discredit the witness.

Mr. McCOURT.—I think when they put up that this witness is credible and was doing a legitimate business, I can show that he took Guy Huff under a different name, and had him locate half a dozen different claims and that Nellie Gilbert was located under the name of Nellie Backus and Brown under a different name, and Bas Wagner as Zenas K. Watson.

A. Because I was in one crooked deal would not

(Testimony of Horace G. McKinley.)

indicate I was never in any straight deal.

Mr. LIND.—I think this discussion is entirely irrelevant. We have never sought to bolster up nor to [614—446] tear down the reputation of this witness. We want to elicit the facts. I object to this as incompetent and irrelevant and manifestly improper.

COURT.—I don't think it is competent for the question now under consideration. You can ascertain whether he made a location for a fee.

Q. Well, your location of Nellie Brown in 11—7 there—you got the land and paid her an outright fee for that?

A. I don't refer to 11—7 at all.

Q. But that was after or about this time.

A. Yes, I would say—

Mr. LIND.—Incompetent and irrelevant. I also object as an apparent effort to impeach the Government's own witness on an immaterial matter.

COURT.—I understand that counsel is trying now to ask him what his business was. Whether he was in the business of locating people for a fee or for the purpose of acquiring title.

Mr. LIND.—He has admitted that he acquired the title in perhaps three-fourths of the instances.

Mr. McCOURT.—Now, he names a definite one and I want to show that the transaction he had with this party—that at the same time he got the land and probably did not pay any fee.

Q. Your location of Nellie Backus in 11—7, or Nellie Brown, rather—

A. Yes.

(Testimony of Horace G. McKinley.)

Q. That you did get the land on—you and Puter did, and you did pay them an outright price for it—

A. All right.

Q. —didn't you? A. Yes, sir.

Q. The same is true of Brown?

A. Yes, sir. [615—447]

Q. And that occurred just about the same time as the other transaction you spoke of—the locating them on a timber claim? A. Much later.

Mr. LIND.—Objected to as incompetent and irrelevant.

Objection overruled; exception saved.

Q. What is that? A. A little later.

Q. How much later?

A. Possibly one or two years.

Q. It was only two or three months after this transaction and controversy, in this case?

A. Well, I am not talking of Brown and Gilbert in this case at all.

Q. No, I understand it was only two or three months later than the locations made in this case.

A. That the 11—7 location was made?

Q. Yes.

A. I guess that is right.

Q. Yes.

A. I think those locations were made in 1901—a year after.

Q. 1900—August? A. 1900.

Q. Now, Guy Huff—where did you locate him?

A. 16 South, 7 West.

Q. And he paid you a location fee?

A. Yes, sir,—

(Testimony of Horace G. McKinley.)

Q. What was his business at that time?

A. Got it through him.

Q. What?

A. That is, he got—I don't know where he got it. I got a location fee out of the claim he was located on.

Q. Who did he take that claim for?

A. Mr. Hobson. I was paid a location fee. [616—448]

Q. By Mr. Hobson?

A. Yes, sir, he was financing Mr. Huff in the matter.

Q. Yes, as a matter of fact, you knew Guy Huff never was able to pay you a location fee himself?

A. I located him on the claim and I got my fee for locating him. You can assume what you please.

Q. Now, this scrip made by locating—school scrip—you and Puter were handling lots of that stuff at that time, weren't you? A. Yes, sir.

Q. How was that secured?

A. That was—you mean the inside part. How would the party that we secured it from secure it, or how did we get it? We would get it from people that dealt in that. There was a sort of ring at that time that dealt in State scrip. Mr. By Geer was the party I had reference to that offered it to me and also Mr. Odell.

Q. You, however, had to get somebody to take it from them? A. Yes, sir.

Q. You had to make application for it?

A. Yes, sir.

Q. Through somebody that was taking it for you?

(Testimony of Horace G. McKinley.)

A. Yes, sir.

Q. Those parties were usually secured for a small consideration?

A. In most cases, yes; that is, if we wanted to get land in that way.

Q. Now, then, up here in this 14—2 and 3, there, was all of the Mealey claims taken after Kribs and you and Puter had your deal?

A. What do you mean by the Mealey claims?

Q. I mean the Mealey claims that are included in these [617—449] two suits to follow this?

A. Yes, I guess they were. I don't know anything about that part at all. I stepped right out of that part of the country when this deal was closed out.

Q. But you do know, as a matter of fact, that those claims were located subsequently?

A. Yes, sir.

Q. And by timber locations?

A. I think so, yes, sir, in most cases.

Q. And after Mr. Kribs had been up there?

A. Yes, sir.

Q. With you? A. Yes, sir.

Q. And most of them, after Mr. Smith had been up there in charge?

Mr. UELAND.—Objected to as irrelevant in this case.

Mr. McCOURT.—The object of putting this Kribs business in here is this: To show that they could have acquired scrip for \$3.00 per acre, and it was no use of getting into a fraudulent scheme. I want to show they went on afterwards and got a lot more land

(Testimony of Horace G. McKinley.)

under apparently the same arrangement.

Mr. LIND.—That will be evidence in the later cases.

COURT.—I don't think that has any effect. He wants to show that they went on taking land under the same arrangement.

Mr. LIND.—It is too vague. I object specifically on the ground that the proposed testimony is too vague and uncertain to have any value for any purpose.

COURT.—The District Attorney will have to make it definite. I understood it was definite.

You may see if he knows anything about it. Confine it to his personal knowledge. [618—450]

Q. (Read.)

Q. Do you know when Mr. Smith first went into that territory himself, personally? Visited the land?

A. Only by what I learned here yesterday. I had forgotten up to that time.

Q. You don't know—have no personal knowledge of it?

A. No personal knowledge, no.

Q. You do know, however, that Mr. Smith and Mr. Kribs secured their lands in that locality—in that locality after they secured those you people were interested in?

A. I know that by hearing it, yes.

Q. Didn't you know at that time that there were other timber and stone entries made in there subsequent to yours a short time?

A. I suppose I did. I did not keep track of the

(Testimony of Horace G. McKinley.)

matter at all in there after that time. I know Mealey went ahead. That is, I would hear, or meet him somewhere on the train or somewhere else, and they would say they was still locating up in their part of the country—something like that. I paid no attention.

Q. Did you know that in the early part of 1901 following that, that Mr. Kribs also secured quite a large tract of land known as the Givens and McMullen claims under the Timber and Stone Act?

A. Never heard of that at all.

Q. Don't know about that? A. No, sir.

Q. Now then, why didn't you fellows file scrip? What was the reason you didn't file scrip on that?

A. Well, we was pretty short of cash, Mr. McCourt.

Q. That was the reason, wasn't it?

A. It certainly was. [619—451]

Q. If you had not been short of cash you would have filed scrip and got the land immediately?

A. We would.

Q. So you had to take some sort of a scheme to hold the title open until you could raise the money?

A. Yes, sir.

Q. And that was by putting entrymen on the land? A. Yes, sir.

Q. As stated—by you perhaps—you would have ninety days' time in which to raise the money, and if you could not make it in that time, could have a republication—give some excuse for a republication and get another extension of time?

(Testimony of Horace G. McKinley.)

A. To raise the money and handle the land, yes, sir.

Q. Yes. A. To make final proof with.

Q. Now, if the Court will permit me, I wish to go back to that figuring just a moment. You say—you talk as though you and Puter wanted to get the location fee? A. At that time, yes, sir.

Q. Now, Puter—the understanding was that Puter should start east immediately as soon as he had made some filing? A. Yes, sir.

Q. And you intended to, right then and there when you and Puter talked that over, to have Tarp-ley and Bas Wagner help you, or somebody else?

A. Yes, sir.

Q. And you knew the fees in the Land Office would be approximately \$10? A. Yes, sir.

Q. You had had sufficient experience with it?

A. Yes, yes. [620—452]

Q. With the filings and knew it would be about \$10? A. At the time of filing?

Q. No, at the time of proof? A. Yes.

Q. And that the 57 claims would be about \$600, approximately?

A. Yes—well, would be \$10 apiece.

Q. Well, \$570? A. Yes.

Q. And you knew it would take about \$20 to get the entrymen down there and back again—

A. Yes, sir.

Q. —two times? A. Yes, sir.

Q. Which would be \$1140? A. Yes.

Q. Then you knew it would take—

A. Eleven hundred and what?

(Testimony of Horace G. McKinley.)

Q. \$1140? A. No, \$1130.

Q. What—20 times 57.

A. Oh, yes, that way. Why don't you take one individual claim? It would be much better to understand.

Q. You thought you were going to make a big pile of money and I want to show you how much.

A. Well, I will get out my pencil and get at this.

Q. \$1140 for taking them to Roseburg twice; that is, \$20 apiece.

A. 57 at \$20 apiece?

Q. Yes. A. All right.

Q. An average of \$7.50 to get them to the land and back? A. Yes.

Q. Then a little over \$400—we will call it \$400.

A. All right.

Q. I think \$418—\$417. A. All right.

Q. You had already agreed to pay the Mealey's \$400? A. Yes, sir.

Q. And you knew you would have to publish these notices? A. Yes, sir. [621—453]

Q. Which would be \$400—\$420 or something like that? A. Yes.

Q. But call it \$400?

A. Yes, if you figured it right there.

Q. And you knew that you would be out several trips to Roseburg? A. Yes.

Q. And you would be out something for Dan and Bas? A. Yes.

Q. And something for paying people \$5.00 who were to get you some information? A. Yes.

Q. Which would probably be \$250?

(Testimony of Horace G. McKinley.)

A. All right.

Q. That would be \$3,190? A. All right.

Q. Subtract that from \$5,700, leaves you \$2,510?

A. Yes.

Q. You also knew Puter would have to go East; that you would have to pay the expenses of whoever was coming to see the land? That would be \$500.

A. Well, now, when do you say I knew of this? At the time of filing?

Q. Before you filed at all.

A. That it would cost \$500 to go East and secure a party to come here?

Q. And get a party out here—and bring a party out here.

A. I would ask him to show the account if he paid that much.

Q. Leave that off and it is \$2,510.

A. All right.

Q. That divided between you and Puter would be \$1,200 apiece? A. All right. [622—454]

Q. For four months' time? A. Yes.

Q. And if you did have to pay anything to bring a man there it would bring you to \$1,000 apiece?

A. All right.

Q. That was all you had in mind for all this trouble you were going to have? A. Yes.

Recross-examination.

Q. There is one reference in one of the letters— one suggestion by Mr. Puter to get a postponement of the date of the final proof. Why did he desire the postponement?

A. Because at that time he did not have anyone

(Testimony of Horace G. McKinley.)

in the East there that he could interest in furnishing the money for final proof. He had not been able to find anyone. He had approached several people and did not get them interested in it.

Q. Now, at the time that you planned this enterprise that you testified in regard to, did you know how many claims you would be able to locate?

A. We started out expecting to get 40. That is, that was the original contract with the Mealey brothers.

Q. Did you—did you at that time figure and expect that you would have the handling of these claims and make a profit on them after they were proved up on?

A. We might have expected that, but there was nothing said about it.

Q. Well, did you have that in view?

A. Yes, sir.

Q. When you went into the business?

A. Yes.

Mr. McCOURT.—What is that?

Q. (Read.) [623—455]

Redirect Examination.

Q. Then you never did think of making \$5,700? It was \$4,000 you were to make?

A. Well, on the start Mealey said we would start out with that. If there was any above that, why, all right.

Q. But when you started out \$4,000 was the price you were figuring on making?

A. No, sir. Our contract called for that much, but we knew there was a larger body of timber land

(Testimony of Horace G. McKinley.)

up in there, but we figured that would be the least.

Q. Well, \$2,000 divided between you was the top price you figured on?

A. From the locations, yes, sir.

Mr. GEARIN.—Well, does the Government owe him any money? Is that what you are trying to show?

Mr. McCOURT.—No, I don't think so. I don't think the Government does. I am inclined to think the Government doesn't owe him anything.

Mr. GEARIN.—We will admit it if you say so.

Recross-examination.

Q. What was your view of the Northern Pacific contest—that that was *bona fide* or otherwise?

Mr. McCOURT.—I object to that as immaterial and not competent.

Mr. LIND.—I ask for his view.

COURT.—I think he can answer that.

A. My view was that they was merely trying to run a bluff to get all these parties to step out, so they could get the land for themselves.

Q. Well, did some of the claimants actually get frightened and hesitate about litigating with the railroad company? [624—456]

A. Well, I couldn't say as to that. If they didn't it wasn't their fault that they didn't, because they made the bluff strong enough.

Redirect Examination.

Q. In fact, some of them got so scared that they made you raise the price to them, didn't they?

A. For relinquishing?

Q. No, for turning the land over to you.

(Testimony of Horace G. McKinley.)

A. Oh, no.

Q. Some you agreed to pay \$50 to, you were made to go to \$75?

A. I don't know whether we were or not.

Q. And some you agreed to pay \$75 to you had to pay \$100?

A. Not on account of the Northern Pacific, I don't think, though it might be so.

Q. You now understand the Northern Pacific people thought and their belief was that you and Puter had located this whole bunch in your own interest?

A. I don't know any such thing, that the Northern Pacific people thought that.

Q. They had you arrested on the strength of it, didn't they?

A. In our own interest, yes. We had it located in our own interest. We did not do it for anyone else's interest. The Northern Pacific people might have thought that, but they could not figure anything illegitimate about it.

Q. That it was your purpose to get the land?

A. I don't know.

Q. And that you had a prior agreement?

A. They didn't make it stick.

Q. And they alleged it in their complaint?

A. They didn't make it stick and we had a trial.

[625—457]

Q. You compromised the trial before you got to the end?

A. We compromised because it took too much

(Testimony of C. E. Loomis.)

money to fight them, not that we thought we would lose out.

Recess taken until 2 P. M. [626—458]

Portland, Oregon, April 22, 1910, 2 P. M.

[**Testimony of C. E. Loomis, for the Government.**]

C. E. LOOMIS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Loomis?

A. At Eugene.

Q. How long have you lived there?

A. Somewhere not far from 20 years.

Q. How old are you, Mr. Loomis?

A. 70 years old past.

Q. Do you know S. A. D. Puter?

A. Yes, sir.

Q. Horace McKinley? A. Yes, sir.

Q. D. W. Tarpley? A. Yes, sir.

Q. Fred A. Kribs? A. Yes, sir.

Q. What official capacity, if any, were you acting in in the years 1900—the entire year of 1900 and 1901?

A. I was a special agent of the General Land Office.

Q. Where were you located, Mr. Loomis?

A. My district was the Oregon City, LaGrande and The Dalles Land districts. My headquarters were at Oregon City.

Q. During the months of April and May, 1900,

(Testimony of C. E. Loomis.)

where were you actively engaged in your official capacity?

A. It is impossible for me to tell. I was in my district. That is all I know about it, sir.

Q. Well, were you not at Roseburg, pending the time that there were a number of Timber and Stone entries [627—459] being made there?

A. I cannot give the date. I couldn't even tell you what year it was. I was sent up there by the Department in the absence of the special agent who had charge of the matter, with instructions to cross-examine a lot of entrymen and their witnesses there, when they gave their final proof.

Q. Were those in a number of Stone entries located in Townships 14 South of Ranges 2 and 3 East?

A. I would tell you if I could, but actually I do not know. It is so long ago that I do not know.

Q. For the purpose of identifying these merely, I wish to ask the witness if it was not a number of Timber and Stone entries that had been, immediately prior to the proof, subject to contest brought by the Northern Pacific Railroad Company?

A. Well, I do not know that, Mr. McCourt. I know this, that there was something—some reason for having them specially cross-examined. Further than that I do not know what it was, for I paid very little attention to it. My orders from Washington were simply to go there as the special agent had received a leave of absence, that I was to go there and in his place cross-examine the people.

Q. Well, were the entries of Josephine and Elvira

(Testimony of C. E. Loomis.)

Jacobs among those? A. They were.

Q. S. A. D. Puter?

A. I do not remember.

Q. You do not remember Mr. Puter? [628—
460]

A. I did not know Mr. Puter at that time. I have never met him, and I don't remember. If I recollect right, Mrs. Puter had a claim there—Sadie E. Puter—I remember the name.

Q. Do you recall that you acted in that capacity at two different times when proofs were made?

A. I do not.

Q. Once in April and once in May?

A. I don't remember that I went but once.

Q. But the one time?

A. Once. I could not be sure about that—if part of them had been; I know from the routine manner of the business, that if a part of them were not finished at that time, and put off to another time, I should undoubtedly have gone back and finished, so that that might be possible. I could not say that.

Q. Did you meet Fred A. Kribs there during that time? A. Yes.

Q. I will ask you whether or not, when you had completed your cross-examination in those cases, or shortly afterwards, you received any money from Mr. Kribs?

Mr. LIND.—Wait.

A. I don't know just when I received the money from him.

Mr. EULAND.—May it please the Court, the de-

(Testimony of C. E. Loomis.)

as immaterial, irrelevant, and as not tending to prove any of the averments of the bill of complaint.

Mr. McCOURT.—The purpose of the testimony is to show conduct upon the part of Mr. Kribs, one of the defendants in the case, and at the time a representative [629—461] of the defendants now in interest, which indicated knowledge upon his part; that is, the conduct of Mr. Kribs at that time—for what it is worth. It may not show; it may not be sufficient alone; but it will be followed by other testimony, which we think will show conclusively a line of conduct upon the part of Mr. Kribs that is entirely irreconcilable with lack of notice of the character of these entries.

COURT.—Do you expect to show that Mr. Kribs was a representative of Smith?

Mr. McCOURT.—Yes, your Honor, I think it will be conceded that he was.

COURT.—As to Willd or Smith?

Mr. McCOURT.—As to Smith and Willd both. Mr. Smith and Mr. Willd were practically the same thing, it will be shown later on.

COURT.—You expect to show Kribs was a representative of Smith, acting for Smith in this transaction.

Mr. McCOURT.—Yes. I think there will be no question about it. I don't know that they will claim anything else.

Mr. LIND.—Oh, yes, we do.

COURT.—Upon that theory and that promise, I suppose this testimony is competent.

(Testimony of C. E. Loomis.)

Mr. McCOURT.—Certainly, if we cannot connect Smith here, we cannot win the case.

COURT.—You may answer the question.

Mr. EULAND.—May it please the Court, I ask that the time and place be fixed in the question with some certainty.

COURT.—You will make it as definite as you can, [630—462] Mr. McCourt.

Mr. McCOURT.—Yes.

Q. Did you, shortly after, acting in your official capacity, cross-examining the entrymen, in those Timber and Stone cases, at Roseburg, Oregon, receive any money from Mr. Kribs?

Mr. LIND.—Do you contend that it relates to these cases in issue?

COURT.—I understand that it is confined to these cases.

Mr. McCOURT.—Yes, your Honor.

COURT.—Certainly you could not inquire into their conduct in any other matters just now.

Mr. LIND.—Does the record show that he cross-examined in these?

COURT.—He said that he remembered the names of some of these applicants.

Mr. McCOURT.—They show cross-examination by C. E. Loomis, Government agent. I won't say all of them, but a great many of them. Proceed.

A. You asked me if I received some money from him.

Q. Yes.

(Testimony of C. E. Loomis.)

A. Barely that question, I did receive some money from him.

Q. Do you know how much it was?

A. No, sir, I do not; but I have an idea it was \$75, if I am not mistaken. I could not tell exactly.

Q. You have a right to go ahead and tell the circumstances under which you received it, and the purpose of it, from your standpoint.

A. At some time—I am unable to state whether it was that [631—463] day or when it was, I was with half a dozen fellows on the street, of whom Mr. Kribs was one, I found afterwards. I could not remember any of the rest. Somebody asked me when I was going home. I said I had got to find somebody with money enough to lend me money enough to get out of the town with, for I was broke. I laughingly said that. That was in the evening. I had no doubt about my ability to borrow money, for I was well acquainted in Roseburg, but I laughingly made that statement. Some time later in the evening, Mr. Kribs came to me and said, “If you need some money—if you have used up your money—I can lend you some money, if you want it.” I said, “Very well; I would just as soon borrow it from you as anybody.” And he gave me some money, loaned it to me. I cannot tell you how much, but I think it was \$75.

Q. Now, do you know whether you ever paid that money back to him or not?

A. I know that I did pay it back to him.

Q. Did you ever pay it to him personally?

A. I do not know that. I do not know how I fendants represented by us object to this question

(Testimony of C. E. Loomis.)

paid it or when. But I have a faint recollection of leaving the money with a German proprietor of the hotel there for Mr. Kribs. But I could not swear positively that I did, but I think that I did.

Q. How much later?

A. I don't know that.

Q. Now, then, you were acquainted with Josephine Jacobs and Elvira Jacobs at that time?

Mr. EULAND.—Just one moment, if you please. Have you got Josephine Jacobs in this? [632—464]

Mr. McCOURT.—Elvira Jacobs.

Mr. EULAND.—We object to Josephine Jacobs in the question, as she is not one of the entrymen.

Mr. McCOURT.—It will be shown that Mr. Kribs afterwards secured, or helped to secure, tried to secure, and did secure some sort of an affidavit or statement from Josephine Jacobs in connection with her claim, which was one of this same group, and Elvira Jacobs together.

COURT.—I understand that evidence should be admitted on the same theory that the other was admitted, because it is alleged to be part of the same transaction.

Mr. EULAND.—Note an exception.

Q. The question was, did you know those people?

A. The question was, whether I knew them before that time or not. It was a little bit misty in my mind whether I did or not; but I think that I knew them before that. I knew those people, knew those two women—Mrs. Jacobs and her daughter. I stated to your last night definitely, that I did know them

(Testimony of C. E. Loomis.)

before. Now, I think that I did, but I am not absolutely sure of it. But I knew them from that time on.

Q. From the time they made their proof?

A. From the time that they made proof, I knew them.

Q. What was the next connection that you had with the entries of Josephine Jacobs and Elvira Jacobs?

A. At some time afterwards—I don't know when—I cannot give the date at all, or any approximate to it—I was walking on the street here in Portland one day, and I met Mr. Kribs. I had known him and his family for a long time, but I had no business with him at all. But he [633—465] came and asked me if I knew Mrs. Jacobs and her daughter. I told him that I did. He said that those two claims with others, he had made some arrangements to obtain, but that a contest had been ordered against them, and that when the special agent went to them to get an affidavit, they would not give one; they said that they had done all they were going to about it. Now, I think he told me that they said that they would not do it unless they were paid for it; and he asked me if I could not go up there, as a friend of his and a friend to them, and suggest to them that they might better sign those affidavits just according to their original testimony. I told him I would do so. I went up, and whether I went up to see them two or three times or not, I don't know, but I think I did. At all events, when I reached them, they said that

(Testimony of C. E. Loomis.)

they would not sign that affidavit unless they were paid for it. Kribs gave me money, and said that he was willing to pay a certain amount of money to get them to sign those affidavits, rather than to have to go through the expense of a contest, for he would have all the expenses to pay if they went to contest. Now, he gave me a certain amount of money—I don't know how much, but I have an idea of about how much it was—and told me that if I could get them to sign it within that money, that any that there was over, I might have myself. Now, I am a little uncertain about how that came, but I know that he gave me a check, which I went and got cashed in order to carry the money to them, and so have my own in money, instead of having any question about it when I got up there, if I saved any. I went up there and talked with them; told them that there was no [634—466] earthly reason why they should refuse to sign an affidavit covering the same ground that they had already covered, and convinced them of it; but they said that Kribs was making lots of money, and making money off of them, off their action, and they proposed to have some of it themselves, and they would not sign unless he paid them. So I made some sort of a bargain with them, and paid them, and I think took a statement to cover points that they would be obliged to swear to, and had them sign it, and carried it back to Kribs. That was as far as I ever went with it. I had no authority in those cases as a special agent whatever. I did not consider that I was acting as a special agent at all, and had no authority—noth-

(Testimony of C. E. Loomis.)

ing whatever. They belonged to the man in the Roseburg district, and I was simply acting as a friend of both parties.

Q. What is your recollection as to the amount you gave them?

A. I am uncertain about it. I have been shown the checks that were given to me by Kribs, and I am utterly unable to place the two, except from thinking it over and the circumstances. One check is for \$75 on a Roseburg bank. Now, upon mature consideration, I am inclined to think that that is the check that he gave me at the time that I borrowed the money of him. The other check is for \$150. Now, as near as I can remember, I did not give them all of that \$150, but a portion of it remained with me, as my pay for doing the work. But if I did give them the whole \$150, he certainly gave me some more, for I know that I got some pay for doing that work.

[635—467]

Q. This transaction with the Jacobs people was some considerable time after Kribs had given you the \$75 in Roseburg?

A. I think it must have been. I don't know that. I think that that \$75 check must be the money that he loaned me in Roseburg, and that the other is a check representing the amount that I paid to the Jacobs—Mrs. Jacobs and her daughter.

Q. I call your attention to the affidavit or statement of claimant, in the report of fraudulent claim or entry, in the entry of Josephine Jacobs, and I will ask you if that is the one prepared by you and de-

(Testimony of C. E. Loomis.)

scribed by you?

A. No, sir, I never saw it before. I don't know anything about it. It is not my handwriting. I never drew up an affidavit in that sort of shape at all. If I drew one up, I just sat down and wrote it out, and had them sign it, in my own handwriting. I never saw this before. This is not my report. This is Stratford's report.

Q. That one is not signed really by the claimant, is it?

A. How is that?

Mr. McCOURT.—I asked that that one may be placed in evidence, in the Josephine Jacobs' case.

Mr. LIND.—I think that is irrelevant, your Honor. He says there is no paper in it bearing his signature or in his handwriting.

Q. Didn't you take the paper that you took up there, wasn't it written out in typewriting—the questions—and when you got up there, Josephine Jacobs herself filled in the answers, in your presence?

A. No, sir. I didn't take any papers up there.
[636—468]

Q. Didn't take any at all?

A. No, sir. Anything that I took from her at all, I sat down and wrote out myself.

Q. Examine the one in Elvira Jacobs—claimant's affidavit—being Government's Exhibit 30.

A. It is the same condition. I know nothing, absolutely nothing at all, about them.

Q. You say the ones you got you handed to Kribs?

A. The ones I got I handed to Kribs.

(Testimony of C. E. Loomis.)

Mr. McCOURT.—I will reoffer that later.

Q. I will ask you if this was not in the month of July that you went up there to the house?

A. It was 10 years ago. I absolutely could not tell you—cannot tell anything at all about it.

Q. Do you recall it was in the summer time?

A. I don't even recall that, sir.

Q. Well, I exhibit to you a check dated March 13, 1901: "First National Bank of Roseburg pay to C. E. Loomis or order \$150.00." Signed Fred A. Kribs. Endorsed "C. E. Loomis."

A. This is my endorsement unmistakably. This is my endorsement on the back there unmistakably.

Q. Now, isn't it a fact, Mr. Loomis, that Mr. Kribs gave you \$125 to give to the Jacobs people, and that this \$150 item is probably something else?

A. No, sir, that is not possible, because whatever he gave me he gave me in a check, and I went and had it cashed.

Mr. McCOURT.—I offer this check in evidence.

Marked "U. S. Exhibit 114."

Mr. McCOURT.—I now exhibit to you a check "Roseburg, Oregon, July 26, 1901. First National [637—469] Bank of Roseburg, Pay to Dr. C. E. Loomis, or order, \$75." Signed Fred A. Kribs. Endorsed "C. E. Loomis," and ask you if that is one of the checks you received?

A. I acknowledge that endorsement, sir. That is my endorsement.

Q. Now, that check is dated some four months later than the \$150 check.

(Testimony of C. E. Loomis.)

A. I don't remember anything at all about the matter.

Q. And some fifteen or fourteen months later than the time you took that cross-examination down there.

A. I don't remember about those things at all.

Mr. McCOURT.—I offer that in evidence.

Marked "U. S. Exhibit 115."

· Cross-examination.

(Questions by Mr. LIND.)

Mr. Loomis, how long had you been in the service at this time?

A. I am not in the service now.

Q. No, I mean at the time this transpired, how long had you been in the Government service?

A. I couldn't tell. I was in there four years, and then an interim of four years that I was out, and then back in again.

Q. Was this during the second time of your service or the first time?

A. I would have to determine when the dates were. I don't know. It must have been the second time, I think, but I am not sure about that.

Q. You were never regularly assigned to duty in the Roseburg district, were you? [638—470]

A. Not at that time. I formerly held the Roseburg district years before that, but I had been out of it for a long time.

Q. At that time?

A. I had no business there whatever.

Q. You had no business there?

(Testimony of C. E. Loomis.)

A. Except I was specially ordered there by the department.

Q. To cross-examine some timber claim claimants at the time of final proof?

A. I just received that notice from the department, to go down and appear at Roseburg, at a certain date, and to cross-examine the entrymen and their witnesses on certain timber claims that were to be proved up on there.

Q. And you did that? A. I did that.

Q. Had you met Mr. Kribs prior to that time?

A. I knew Mr. Kribs. I had not met him—I don't think I had met him for quite a long time before. I don't know about that. I don't know when I saw him before that. I had known him before that. I had met him and his family before that.

Q. Here at Portland?

A. Well, I should presume likely, and still I may have met him at hotels somewhere else—I don't know. I had been introduced to his wife and to his two or three little boys, and knew them all reasonably well.

Q. Did you have any talk with Mr. Kribs in regard to these claims on that occasion?

A. Not one word.

Q. Did you know, at the time that you cross-examined the [639—471] claimants, that he was interested in these claims? A. No, sir.

Q. Directly or indirectly?

A. No, sir, I did not know it.

Q. Did you think he was?

A. I didn't think anything about it. I was not

(Testimony of C. E. Loomis.)

there for that purpose. I was not ordered there to examine into the claims in any possible way. I was simply ordered there to do one definite thing—to cross-examine those people, and nothing else. I did that and left.

Q. Did you do that?

A. I did that and nothing else.

Q. Did you do it truly and faithfully?

A. As faithfully as I knew how.

Q. Did you misstate any of the answers to the questions that were given to you to read to them?

A. There were no questions given to me to read to them. It was left entirely to my own election what I should ask them. And as fast as they made their proofs, I went right at them, and asked such questions as occurred to me in regard to their seeing the land, having been on the land, having made prior bargains to sell, and such things that were unlawful. And the questions and the answers were taken down by a stenographer, and I never saw them afterwards. They were sent to Washington with the papers. I knew nothing about them afterwards.

Q. Was it after the hearing and these cross-examinations had been held, that you made that statement in the presence of Mr. Kribs that you would go home if you had the wherewithal?

A. Yes, it was after that. [640—472]

Q. How long after, if you remember?

A. I couldn't tell you.

Q. Do you know whether it is on the same occasion?

(Testimony of C. E. Loomis.)

A. I don't even know that, sir. I do not know that. I know that I borrowed money of him to come out of Roseburg.

Q. Now, did you receive or accept that money with any understanding that it should influence your official action or the discharge of your duties?

A. Not at all. I did nothing for him. There was nothing for him to pay me for. I had done nothing for him—not a thing in the world. I had simply gone there in the discharge of duty and cross-examined those people. That is all I did. I had nothing else to do with the cases. I never examined the claims, never made any reports on them, never did anything of the kind. I never did anything for him in connection with it.

Q. Now, did Mr. Kribs, by word, suggestion, or conduct, intimate to you that he wanted to influence your official action? A. Not in any way, sir.

Q. In regard to the Jacobs matter, that was entirely outside of your official duties?

A. I considered it entirely outside. I had nothing to do with the cases. They were in the hands of another special agent. He was doing it, and he could not get them to make the affidavits. I thought that they ought to cover the ground that they had already covered, willingly, and I was willing to go and tell them so.

Q. You don't know whether those affidavits were ever transmitted to the General Land Office or not?
[641—473]

A. I know that mine were not. I know that the papers that I had them sign, I know they were not,

(Testimony of C. E. Loomis.)

because I afterwards met—am I permitted to go that far?

Mr. McCOURT.—I don't care. Anything you want to tell, Doctor.

A. I met special agent Stratford afterwards, and asked him if those women signed the affidavits for him. He said yes, he went up and took the affidavits himself, and put them with the reports. That is all I know about it. So that I know that mine, whatever I took in the way of statements—they were not in proper shape to be sent, as I recollect them; they were simply something to fasten them down until something else could be done—I know that mine did not go to Washington, just by that. That is all I know about it.

Q. Well, now, the statements that you obtained from those women, were there any false statements, any untruths?

A. Not at all, as far as I know. If they made any false statements, I do not know it. I remember distinctly Mrs. Jacobs saying to me over and over, "I used my own money, and my daughter used her own money." Such statements as that I remember. Now, then, all that I had to do was to take their statements—not to inquire into the truth or falsity of them, but simply an affidavit as to themselves.

Witness excused. [642—474]

Mr. McCOURT.—If the Court please, we have gotten to a place now where we will have to introduce some bank records, or have some arrangement with counsel by which we can agree.

Mr. LIND.—I think we can agree on anything

(Testimony of O. A. McClallen.)

that is a fact, to save time.

Mr. McCOURT.—We have about agreed, if the Court pleases, that the cashier of the bank at Roseburg may make a certificate of these matters, which we have a showing of here, and upon his certificate it will be admitted as a correct transcript of the record, the bank's record, for whatever it is worth; subject, I assume, to any other objection.

Mr. GEARIN.—Any objection we may have to it for incompetency and irrelevancy, the same as if the witness was on the stand. That will save a great deal of time. [643—475]

[**Testimony of O. A. McClallen, for the Government.**]

O. A. McCLALLEN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

What is your business, Mr. McClallen?

A. Hotel business.

Q. Were you conducting a hotel in Roseburg known as the McClallen House in 1900?

A. I was employed there during the year 1900, yes, sir.

Q. You were not conducting the hotel, yourself, at the time? A. No, not personally.

Q. I have here what is designated as the room back of that hotel covering that period. Have you the registers here covering that period?

A. No, sir.

(Testimony of O. A. McClallen.)

Q. (Mr. McCOURT.) Now, I understand counsel do not make any question but what the parties were there, or that they had the room at least when the book indicates.

Mr. EULAND.—What is this for?

Mr. McCOURT.—Just merely to show his presence there at the time—when he got there and when he left, in April and May of 1900.

Mr. EULAND.—Well, there is this about it. He was there a great deal at that time, and he may have paid for a room when he was not there at all. I would not want to make an admission that would not be in accordance with the facts.

Mr. McCOURT.—Let us ask this man what this book shows that he has in his hand.

Mr. LIND.—You better ascertain whether the book [644—476] is any indication whether he was there, or whether he was just paying for the room.

Mr. GEARIN.—There is nothing there to show.

Q. Does that book show whether or not the man was there or not at the time? A. It does.

Q. You can tell from the entries there whether a man was at the hotel, actually at the hotel at the time? A. Yes, sir.

Mr. McCOURT.—That covers it.

Mr. GEARIN.—Ask him if he knows the clerk's writing.

Q. Is that your writing?

A. That is the proprietor, Mr. Good's handwriting, most of it there. This is what is known as the transfer register at the hotel, when a man registers, it is transferred and registered in this book.

(Testimony of O. A. McClallen.)

Mr. LIND.—Why not let him make a copy of this?

Mr. McCOURT.—I think that ought to go in now while he is here, and let him go, and be subject to your explanation of it. We will keep the book here, and you can look at it.

Mr. LIND.—That is all right.

Q. That book that you have in your hand there is made up in alphabetical order, is it? A. It is.

Q. Well, will you please examine the book in the month of April, if it shows the month of April, and state to the Court the entries that occur in the book, as to Mr. Fred A. Kribs?

Mr. LIND.—Read the entries right into the record. [645—477]

A. During the month of April?

Q. Yes.

A. The first entry is on the 13th day of April. Mr. Kribs, wife and two children, arrived to supper in the evening, left on the 21st day of April, at breakfast.

Q. Read the entire entry.

A. And McMullen supper, lodging and breakfast \$1.50. Total paid \$36.60.

Q. I note in that same entry under the column "House," the designation "Mc" opposite the entry which you have just read.

A. They also have an annex at the hotel there, and this is to show that he had Room No. 1 in the main hotel, what is called the Mc. House—the McClallen House. Some entries are made that way. Here is one, Room 44 in the Van Houghton House. All the entries are not made that way, but some of

(Testimony of O. A. McClallen.)

them were at that time.

Q. The next entry?

A. On the 25th day of April he was there. Kribs and boy, had Room 1. Phone 90 cents, 50 cents, \$1.20, 50 cents, 50 cents, 95 cents. Laundry 90 cents. Left on the 30th day of April, after lodging. Forwarded \$12.50—the bill was not paid at that time. The next entry is on the 28th day of April. Room 1, McClallen House. Kribs, Mrs. and boy. Arrived to supper left on April 30th after lodging, total amount \$5.00 forwarded.

The next entry is on the 1st day of May, 1900. Room 1 McClallen House, Kribs and Fred. Forwarded \$17.50. Phone \$5.45, drayage, 50 cents, left the 22d day of May after supper. Total amount \$112.90 [646—478] marked paid.

That \$112.90 also includes another entry here, for the 1st day of May, 1900, Mrs. Kribs and Bud. Here is an entry on the 11th day of May. B. and K. left, returned on the 14th day of May, Phone 80 cents, laundry 35 and 30 cents. Left on the 22d day of May, after supper. Total amount paid \$112.90. That entry, I would judge, means that they left at breakfast on the 11th day of May—Kribs left—"K," I notice it now, 11th day of May Kribs left. The next entry is on the 1st day of June, occupied Room 1. F. A. Kribs arrived for lodging. Left on the 4th day of June after supper. Total amount paid, \$4.50. On the 5th day of June, 1900, F. A. Kribs occupied Room 1. Came for lodging. One extra meal. Left on the 6th day of June. Total amount paid, \$2.00. The 7th day of July, 1900, F. A. Kribs

(Testimony of O. A. McClallen.)

and family, Room 1. Arrived for lodging. Express, 70 cents McMullen account. Laundry 25 cents. Davis and D, \$11.00. Now, there are four or five accounts here right in a row. The accounts are transferred. Left on the 31st day of July after lodging. Total amount paid \$159.15.

Mr. McCOURT.—I think that is far enough to go with this case, if we can use a copy after it. Can't we use the book now, with the instruction the man has given us, without making a copy?

Mr. LIND.—Yes, certainly.

Q. I wish you would look there for the account of Horace McKinley about that time, or his presence there, if he was there. [647—479]

A. January 18, 1900, McKinley and Tarpley.

COURT.—There is not any controversy about that. Mr. McKinley testified.

Mr. COURT.—I guess not. Only I wanted to show these parties were staying at the same hotel.

Mr. LIND.—If it is a fact, it will be conceded.

Mr. GEARIN.—That was the leading hotel in the place?

Mr. McCOURT.—As a matter of fact, the room book does not show that he stopped at this hotel, although he says he always stopped there.

Mr. GEARIN.—Well, there was no room, I guess, at that time. Crowded there.

Mr. McCOURT.—He may have eaten there. Would that show?

A. It would not show that. Only where they had rooms.

(Testimony of O. A. McClallen.)

Cross-examination.

(Questions by Mr. LIND.)

I want to ask you—for instance, your ledger shows that Mr. Kribs and family took a room on April 13th, and that he paid for that room until April 21st.

A. Yes, sir.

Q. Now, it does not show whether Mr. Kribs was constantly in Roseburg during that time?

A. No, sir.

Q. Likewise in regard to the dates between May 1st and May 12th.

A. Well, this entry of May 11th. This shows an entry on here of May 11th, with the initials B and K, left, [648—430] returned on the 14th day of May for lodging. I would infer from that that he left after breakfast on the 11th day of May.

Q. Yes, but you would not infer that he was at the hotel constantly between May 1st and May 11th?

A. This book would show that he was there all the time from May 1st.

Q. That he or some member of his family was there all the time? A. Yes.

Q. That is all it shows?

A. That is the only entry it shows, where anyone had left of the family, at that entry there, and returned on the 14th.

Q. He paid for the room during that period?

A. This book shows the bill was paid \$112.90. I would imagine that he paid for it all the time, yes.

Q. Now, take the dates between April 25th and 30th. You said the book showed that he took a room, he and his family took a room on April 25th,

(Testimony of O. A. McClallen.)

and was there until April 30th.

A. This entry shows that Kribs and boy arrived on the 25th day of April and left on the 30th day of April. Total amount paid, \$12.50. This also shows the rate, \$3.00 per day. It could be easily figured up how long he was there, and what he paid for.

Q. Well, you read another entry, April 28th and 30th. How does that come in?

A. This entry shows here on the 28th day of April, Kribs, Mrs., and a boy came for supper; left on the 30th day of April. It is just dittoed under Kribs. [649—481] It does not say Kribs—it is Mrs.

Q. Doesn't the entry show the young man stayed there all the time, and that Kribs was probably gone?

A. No, it doesn't show that anyone had left whatever.

Q. That is, it doesn't show one way or the other?

A. No, sir.

Q. It simply shows he had the room?

A. The first entry says, Kribs and Boy. And the next entry is dittoed, Mrs. Kribs and boy—probably Mrs. Kribs and boy. They all occupied the same room, and they left the same time.

Q. Then between the dates given in May the record shows that he paid for the room. It does not show whether he was there all the time or not.

A. Only that one entry where it is marked here, May 11th and returned on the 14th of May.

(Testimony of O. A. McClallen.)

Redirect Examination.

Q. The record does show in some of those instances there that Kribs himself was absent part of the time? A. This entry here, yes, sir.

Q. And if that had occurred in the other entries, that same sort of an entry would have been made?

A. It should have been made, yes, sir. When they were only out a meal, there was no note made of it.

Mr. McCOURT.—The reading of those entries can take the place of—the introduction of the book.

Mr. LIND.—Oh, yes, certainly.

Witness excused.

Whereupon proceedings were adjourned until tomorrow morning at 10 A. M. [650—482]

Portland, Oregon, April 23, 1910, 10 A. M.

Mr. McCOURT.—There is a matter of record which I think counsel can agree upon, and that is this: That the tax records of Linn County, Oregon, show that the taxes upon the land involved in this case for the year 1907, amounting to \$777.82 were paid by Nils O. Werner, by Frank Alley, agent, on the 19th day of March, 1908, by tax receipt No. 4524; and that they were at that time assessed to Nils O. Werner; and that the taxes for the year 1906 on the same land amounting to \$844.01 were paid March 11, 1907, by Nils O. Werner, by Frank E. Alley, agent.

Mr. UELAND.—May it please the Court, while we admit that the record shows what the District Attorney has stated, we don't make the admission that the taxes were in fact paid by Nils O. Werner,

but the record shows that there was an agent.

Mr. McCOURT.—I suppose we could not show any more by this than the record itself will show.

Mr. UELAND.—I don't want the admission to be construed they were in fact paid by him.

COURT.—You will admit that the records of Linn County show what the District Attorney says?

Mr. EULAND.—Yes.

McCOURT.—Of course, we offer that to show where the records indicate the title was at that time.

Now, if the Court please, there are certain records that we assume are in the possession of the defendants, and we have made demand upon them to produce them. Among those we wish are the original deed from John A. Willd to Mr. Greacen, and from him to Hubert E. Rogers; from Rogers back to Werner and from Werner to the Linn and Lane Timber [651—483] Company.

Mr. UELAND.—We have not the deed from Willd to Greacen.

Mr. McCOURT.—Have you the deed from Greacen to Rogers?

Mr. UELAND.—We have not.

Mr. McCOURT.—From Rogers to Werner?

Mr. UELAND.—We have not.

Mr. McCOURT.—Do you know where those deeds are?

Mr. UELAND.—No.

Mr. McCOURT.—Have you the original mortgage?

Mr. UELAND.—Mr. District Attorney, while I don't know where these deeds are, I think in all probability they are in the office of the Linn and

Lane Timber Company. I did not make an effort to pick out these deeds. I don't think you called for them. You called for two deeds, and those I have, and the reason I did not pick out these others is because there is no issue on the pleadings as to these conveyances.

Mr. McCOURT.—No, there is no issue, although the documents themselves might indicate a conduct which would bear out the allegation.

Mr. UELAND.—You will give me credit for not having specified these in the notice.

Mr. McCOURT.—I have not examined it, but I thought it called for all of those.

Have you the original mortgage with you of Werner to Arnsell? I don't care so much about the mortgage if you have the note?

Mr. UELAND.—I may have that at the hotel. I have not it here. That is not specified in your notice.

Mr. McCOURT.—Will you look up that and try to produce it Monday morning? [652—484]

Mr. UELAND.—I will.

Mr. McCOURT.—I understand it was endorsed by C. A. Smith.

Mr. UELAND.—I cannot say as to that, but if I have it I will bring it.

Mr. McCOURT.—Now before calling for the two deeds which counsel admits he has, I want to place in evidence the deed to Willd and the mortgage to Kribs of Douglas Adkison—a certified copy of the record—so as to complete that entire record.

Mortgage marked “U. S. Exhibit 116.”

Deed marked “U. S. Exhibit 117.”

Mr. McCOURT.—And similar deed and mortgage

of Charles Barr and wife.

Mortgage marked "U. S. Exhibit 118."

Deed marked "U. S. Exhibit 119."

Mr. McCOURT.—Similar deed and mortgage of Harry C. Barr.

Mortgage marked "U. S. Exhibit 120."

Deed marked "U. S. Exhibit 121."

Mr. McCOURT.—A like deed and mortgage from Hugh Blakely.

Mortgage marked "U. S. Exhibit 122."

Deed marked "U. S. Exhibit 123."

Mr. McCOURT.—A like deed and mortgage from I. R. Borum and wife.

Deed marked "U. S. Exhibit 124."

Mortgage marked "U. S. Exhibit 125."

Mr. McCOURT.—A similar deed and mortgage of Peter Buffington.

Mortgage marked "U. S. Exhibit 126."

Deed marked "U. S. Exhibit 127."

Mr. McCOURT.—Similar deed and mortgage of Frank W. Burford. [653—485]

Deed marked "U. S. Exhibit 128."

Mortgage marked "U. S. Exhibit 129."

Mr. McCOURT.—Similar deed and mortgage of Charles Burley.

Mortgage marked "U. S. Exhibit 130."

Deed marked "U. S. Exhibit 131."

Mr. McCOURT.—Similar deed and mortgage of James B. Cooley and wife.

Mortgage marked "U. S. Exhibit 132."

Deed marked "U. S. Exhibit 133."

Mr. McCOURT.—A similar deed and mortgage from John L. Green and wife.

Mortgage marked "U. S. Exhibit 134."

Deed marked "U. S. Exhibit 135."

Mr. McCOURT.—A similar deed and mortgage of Elvira S. Jacobs and husband.

Mortgage marked "U. S. Exhibit 136."

Deed marked "U. S. Exhibit 137."

Mr. McCOURT.—Similar deed and mortgage of John J. Jaggy.

Mortgage marked "U. S. Exhibit 138."

Deed marked "U. S. Exhibit 139."

Mr. McCOURT.—A similar deed and mortgage of Benjamin F. Kirk and wife.

Mortgage marked "U. S. Exhibit 140."

Deed marked "U. S. Exhibit 141."

Mr. McCOURT.—Similar deed and mortgage of Elam Miller.

Mortgage marked "U. S. Exhibit 142."

Deed marked "U. S. Exhibit 143."

Mr. McCOURT.—A deed of S. A. D. Puter and wife to John A. Willd bearing date the 23rd day of April, 1900.

Deed marked "U. S. Exhibit 144."

Mr. McCOURT.—A deed of Sadie Puter and husband to John [654—486] A. Willd bearing the date April 23, 1900.

Deed marked "U. S. Exhibit 145."

Mr. McCOURT.—Deed of Zebulin Smith to John A. Willd, dated the 23d day of April, 1900.

Deed marked "U. S. Exhibit 146."

Mr. McCOURT.—Also a correction deed of Zebulin Smith to John A. Willd, bearing date June 13, 1900.

Marked "U. S. Exhibit 147."

Mr. McCOURT.—Mortgage to Kribs and deed to Willd of Jacob W. Stillwell.

Mortgage marked “U. S. Exhibit 148.”

Deed marked “U. S. Exhibit 149.”

Mr. McCOURT.—Like deed and mortgage of George L. Thompson.

Deed marked “U. S. Exhibit 150.”

Mortgage marked “U. S. Exhibit 151.”

Mr. McCOURT.—Certified copy of a deed of John A. Willd and wife to Robert F. Greacen, bearing date September 14, 1900.

Mr. UELAND.—We object to that because the averment of the bill as to that is expressly admitted in the answer. I think it has no bearing upon the issue of this case.

Mr. McCOURT.—I am going to follow that by a Linn and Lane Timber Company deed, and it will perfect the entire record here.

COURT.—You can put it in. I don't know what bearing it will have on the case.

Mr. McCOURT.—I think in the matter of recording, it may have some bearing together with the others.

COURT.—Is that dated 1900?

Mr. McCOURT.—Yes, the 14th day of September, 1900. Filed for record March 4, 1901. [655—487]

Marked “U. S. Exhibit 152.”

Mr. McCOURT.—I now offer the deed of Robert F. Greacen to Hubert E. Rogers, bearing date the 8th day of October, 1900, filed for record March 4, 1901.

Marked “U. S. Exhibit 153.”

Mr. McCOURT.—I now offer deed of Hubert E.

Rodgers and wife to Nils O. Werner, bearing date the 21st day of December, 1904, filed for record, December 31, 1904.

Marked "U. S. Exhibit 154."

Mr. UELAND.—May it please the Court and the District Attorney at this time, it occurs to me I would like to see whether it might not be understood that, if the District Attorney and the attorneys for the defendants can agree upon substituting for this mass of documentary evidence as stated, what it shows, in order to reduce the record, the Court will have no objection to substitute it for the record.

Mr. McCOURT.—You mean for this Court—the stenographer does not include these in the record.

Mr. UELAND.—But suppose it should go up?

Mr. McCOURT.—There will be no question about that. We can do that. If necessary it may be agreed it may all go up without being printed or any other statement that we can agree upon.

Mr. UELAND.—I thought we might agree upon a statement upon what all of this mass of documentary evidence shows, that is satisfactory to the District Attorney and ourselves and reduce the record.

COURT.—I think it will facilitate the final adjustment of the case if the Court does not have to go through these and make up a tabulated statement himself.

Mr. McCOURT.—We have that all arranged so it can be presented. [656—488]

Mr. McCOURT.—Now, that deed of C. A. Smith, if you please, to the Linn and Lane Timber Company.

COURT.—Did that last deed vest the title in Smith?

Mr. McCOURT.—No, it conveyed it to Werner.

(Mr. Ueland hands District Attorney deed from Smith to Linn and Lane Timber Company.) [657—489]

Mr. McCOURT.—Now, there is a matter I would like to put in the record. I have a witness who could testify to it, but it seems to me that we should be able to have the record show that without calling a witness. That is this: An examination of the Linn County records was made by the Government shortly before the commencement of this suit and the two kindred suits, a few days before, and at that time there was nothing in any of the records, either in the Recorder's office, the Clerk's office, or the Assessor's office, or upon any other public record of Linn County, showing any interest, claim or title by the Linn and Lane Company in or to any of the lands involved in this suit.

Mr. UELAND.—We want to save the attorney all possible trouble, and the record and proof now shows that the deeds by which the title is vested in the Linn and Lane Company were not recorded until September 9, 1908, so upon that subject we don't need any question, but to make a wholesale admission about absolutely nothing of record, I don't want to do that. We don't know that ourselves. We cannot do that however much we would like to oblige you, Mr. District Attorney.

Mr. GEARIN.—What do you claim?

Mr. McCOURT.—I claim there is nothing there at all. That is what I want the record to show. There was nothing that could disclose to us any interest or

title in the Linn and Lane Company at that time.

Mr. UELAND.—We cannot admit that. We cannot make an admission that might be misconstrued.

Mr. McCOURT.—I don't know how it can be misconstrued.

COURT.—Call your witnesses. [658—510]

Mr. McCOURT.—Now, if counsel will let me have those four letters that we looked at the other night.

Mr. UELAND.—Here they are. Before I forget it, Mr. District Attorney, I will state that the original note and mortgage from Werner to Arnsell that you asked for the other day, I did not find among my papers.

Mr. McCOURT.—I wish to offer in evidence, if the Court please, letter of July 26, 1900, of C. A. Smith to S. A. D. Puter, or rather, I will offer it for further identification when Mr. Puter comes back. I want to offer it in connection with Mr. Puter's testimony, but I will have to have Mr. Puter to identify it.

Mr. LIND.—We will admit it. We will not dispute the genuineness of the document.

Mr. McCOURT.—Then I will offer the letter in evidence to be supplemented by Mr. Puter's testimony.

Marked "U. S. Exhibit 179."

[U. S. Exhibit No. 179.]

"Minneapolis, Minn., July 26/00.

Mr. S. A. D. Puter,
Portland, Ore.

Dear Sir—

You will remember at different times we talked

about the twenty-four claims that the Northern Pacific contested, and which they were permitted to take and that you would secure these claims from them.

Has not the time come for you to take action in this matter? More than three months have passed since the contests, and suppose that the time is nearing when patents will be issued.

Should think the proper way to do would be to go to the Nor. Pac. and buy them off. You probably would have [659—578] to also open up negotiations with them for the balance of their timber on Rock Creek. If I remember correctly they have one Town' fairly solid (14-2, if I remember correctly).

Yours truly,

C. A. SMITH LUMBER CO.,

C. A. SMITH."

[660—579]

Mr. McCOURT.—I offer letter of C. A. Smith to R. V. Belt, January 10, 1901.

Marked "U. S. Exhibit 180."

[U. S. Exhibit No. 180.]

"Minneapolis, Minn., Jan. 10/01.

Mr. R. V. Belt,

1314 10th St. N. W., Washington, D. C.

Dear Sir—

I take pleasure to herewith introduce Mr. S. A. D. Puter, Portland, Oregon, who has come to Washington for the purpose of straightening up and securing patents to a lot of land in the Roseburg (Oregon) District, in which I am interested, and

wish you would kindly render him such services as you can in securing the patents for all of such lands as speedily as possible. The lands in question are located in Townships 14 South, Ranges 2, 3 and 4 East, Willamette Meridian.

Yours truly,

C. A. SMITH LUMBER CO.,
C. A. SMITH."

[661—580]

Mr. McCOURT.—I also offer letter to S. A. D. Puter dated January 18, 1901, from C. A. Smith Lumber Company, signed C. A. Smith.

Marked "U. S. Exhibit 181."

[U. S. Exhibit No. 181.]

"Minneapolis, Minn., Jan. 18/01.

Mr. S. A. D. Puter,
Milwaukee, Wis.

Dear Sir—

I have just wired you to Washington, care of Raleigh Hotel, 'Fred thinks breakers are cleared away and everything will be all right' this on the strength of a telegram just received from him, stating that he is assured that everything will be all right, and presume that he knows what he is talking about. I also received a telegram from him dated day before yesterday, reading,

'Have known standing two weeks and retained two Parties to make proper arrangements, if possible. Steve can do nothing there, but should see entremen and have them make proper affidavits when agent asks for them. Have matters well in hand. Nelson And Eddy

only people to pull out matters to head off hearing.'

I have all confidence now that Fred is satisfied that this matter will come out all right. It might necessitate some one going to Washington again very shortly. Of course I do not know what arrangements Fred refers to. I received your letter of Tuesday, also your telegram of yesterday. Hope everything will come out all right. The Bank has already telegraphed for the funds, so I presume that matters are working in Humboldt Co.

Yours truly,

C. A. SMITH LUMBER CO.,

C. A. SMITH."

[662—581]

Mr. McCOURT.—I offer letter of January 19, 1901, from C. A. Smith Lumber Company, signed C. A. Smith, to S. A. D. Puter.

Marked "U. S. Exhibit 182."

[U. S. Exhibit No. 182.]

"Minneapolis, Minn., Jan. 19/01.

Mr. S. A. D. Puter,

Milwaukee, Wis.

Dear Sir—

I am in receipt of yours of the 17th. I notice you say you will stay in Washington until Monday. I have just wired you,

'Do not take this matter up with Nelson or Eddy under any circumstances without my seeing them first,'

—which I herewith wish to confirm.

Of course, upon receipt of this you will probably have left Washington for good this trip.

Nelson and Eddy would not in all probability do anything for you or at your request without first being requested by me or some of their constituents from this state to do so, either personally or in writing, and hope that you have not gone too far with them.

Yours truly,

C. A. SMITH LUMBER CO.,

C. A. SMITH." [663—582]

Mr. McCOURT.—I would like to ask counsel for both Mr. Smith and Mr. Kribs whether or not they have any written contract or memorandum made by Puter or McKinley with either Smith or Kribs or both, in relation to the purchase of these lands?

Mr. LIND.—We have not.

Mr. McCOURT.—I would like to ask Mr. Tanner, attorney for Mr. Kribs, whether or not he has any accounts, statement of account, between Mr. Smith and Mr. Kribs, relating to the several payments for these lands, and the expenses in connection with them—original books of entry?

Mr. TANNER.—I have no knowledge of it myself. I don't know what Mr. Kribs may have. I will find out.

Mr. McCOURT.—I understand you gentlemen have none.

Mr. LIND.—We have not.

Mr. McCOURT.—Do you know whether or not there is any such?

Mr. LIND.—There is some data in Minneapolis—what it is, I don't know.

Mr. TANNER.—You want the accounts, if any,

between Mr. Smith and Mr. Kribs about these matters?

Mr. McCOURT.—Yes, about payments. I would like to have the accounts, if any, to see how it was kept—how the charges were made, how often statements were made, and what information was sent with them—the correspondence.

Mr. TANNER.—I will see whether he has it.

Mr. McCOURT.—I would like to see the telegram of January 19, 1901, from Mr. Puter to Mr. Smith. I think it is. (Telegram produced.)

I offer this telegram.

Marked “U. S. Exhibit 183.” [664—583]

[U. S. Exhibit No. 183.]

“Washington, D. C. January 19, 1901.

C. A. Smith.

Fred wires sworn statements sent Stratford follows in few days haven't spoken to anyone here. leave for Chicago tomorrow.

S. A. D. PUTER.

11:35 P. M.”

Mr. McCOURT.—Counsel has some other correspondence there which I have had not had opportunity to examine and of which I do not know the nature, and I prefer to await the arrival of Mr. Puter, before making any specific demand for further instance. I understand Mr. Puter will start either today or tomorrow. That will bring him here about Monday. I would like to see him before making any specific demand for these instruments, unless I could see them all in advance. Counsel doesn't seem inclined to allow me to examine them unless I

specifically designate them.

Mr. LIND.—We feel that we have such a character to deal with that we would prefer to keep our correspondence until he has testified; that is, unless, of course, counsel wants to use it.

Mr. McCOURT.—I cannot tell whether I want to use it until I can see it. If counsel can allow me to examine it I can tell whether I want to use it or not.

Mr. LIND.—We will after you examine Puter.

Mr. McCOURT.—Now, if the Court please. I think I have but about three more witnesses and all short. Do I understand that the defendants will come on and put in their evidence now, or do you also want to wait for that until Mr Puter arrives?

Mr. LIND.—In view of the fact that Mr. Puter is [665—584] coming, we would prefer to wait until his arrival.

Mr. McCOURT.—Of course, I would like to have counsel put in their testimony, whatever they have available, until Mr. Puter takes the stand, rather than come back to it. I don't want to be unreasonable about it. I would like to hear some of their testimony before I put Mr. Puter on the stand.

Mr. LIND.—We haven't any testimony to offer until Mr. Puter makes it necessary to offer some. I don't say that absolutely. There may be some things, but I mean so far as the general scope of the defense is concerned, we can't offer any until Mr. Puter has been examined.

Mr. McCOURT.—I should probably say also that Mr. Rittenhouse of the General Land Office is on his way here, and I might want to call him, and there are

some matters where I may wish to take a short deposition or two, but can't tell until I see what Mr. Puter has to offer, and it is probable that counsel for defense may want a deposition or two.

Mr. LIND.—I would like to ask the District Attorney one question: Do you propose to offer any further testimony to impeach the organization of the Linn and Lane Company or of the conveyances made to it, or is the Government's record complete in those respects, now?

Mr. McCOURT.—So far as I am advised, I think it is, although there may be a small matter or two that I wish to further offer, as to the date upon which the instruments were made. Of course, I don't attack the fact that the Linn and Lane Timber Company was organized at or about the time that these records show.

Mr. LIND.—The reason I made this inquiry, your Honor, [666—585] is this: If the record in that respect is complete, so far as the Government is concerned, then it seems to me that with the consent of the District Attorney, if such were the pleasure of the Court, it would be perfectly proper at this state of the case, to make a motion in behalf of the defendants whom we represent, that the bill be dismissed for want of equity. That would raise the question of the action of the Interior Department on this whole matter, and also the question of the statute of limitations; and which we would like to argue at some little length. If the matters we suggest were well taken it would dispose of the necessity of further work in this case.

COURT.—I think it would be advisable to have all the testimony, especially the Government's testimony in, before such a motion is made.

Mr. McCOURT.—I don't think the counsel can argue a motion to dismiss and have further testimony offered. If they want to make a motion to dismiss after I have Puter's testimony in and such other small matters as I wish to put in, that, of course, is their privilege, and that would foreclose them going in later. If they don't want to rely entirely upon the legal question, then they must present evidence.

Mr. LIND.—That is true. That is why I asked you if the Government's case was complete in that regard, and that this might be done by consent without waiving the right of either party to pursue the facts further, if so disposed.

Mr. McCOURT.—The testimony of Mr. Puter will probably elucidate a great many matters connected with that organization, or of that corporation, and the transfer to it, and it would not be fair to the Government or the Court at this time to argue an abstract proposition.

COURT.—We will wait until Mr. Puter comes.
Adjourned. [667—586]

Mr. McCOURT.—If the Court please that, I think, is all the testimony we have available just at the present time. Mr. Tanner advises me that he has some papers and other matters that I may look at, or possibly I may look at them, and that can be offered in connection with Mr. Puter's testimony when we get to it later, together with other matters that we will try to check up at that time and place

in the record. Now then, we will end this case for the present, with the exception of these fag ends that we want to close up, and the testimony of Mr. Puter.

Mr. LIND.—With the consent of the District Attorney, we would like to call two witnesses who want to leave the city, just for a few questions. It will be very brief. [668—617]

Portland, Oregon, May 3, 1910. 10 A. M.

Mr. McCOURT.—I am compelled to ask a little further indulgence, Mr. Puter arrived last night, and, after the long trip, he was pretty tired, and could not talk to me last night. I just got him in the office about half an hour ago, and I would like a little opportunity to kind of go over the case with him before calling him on the stand. And besides, the bank records, which I thought would be here yesterday morning have only just arrived this morning, and have not been delivered yet at the office from the express office. It will be an hour before I can get them in here. If there is not any undue objection, I would like to have until two o'clock before proceeding with the cases. I do not do this for the purpose of delay, but for the purpose of my own protection, and to expedite the cases as rapidly as possible.

Mr. LIND.—Well, your Honor, I am very solicitous to get through and get back home, but we do not want to embarrass the district attorney in the least. Our personal wishes ought not to stand against his requirements.

COURT.—Very well.

Mr. UELAND.—I would ask the district attorney if he has made up his mind about the appointment

of an examiner to take the testimony East. I would occupy my time in preparing the order, or something of that sort if we are agreed upon it.

Mr. McCOURT.—I have made no further investigation, but I see no reason to object to an officer of the United States Court.

COURT.—Well, you may prepare an order of that kind. [669—698]

Mr. UELAND.—And in that connection, should we have any order entered at this time, Mr. District Attorney, limiting the time for the taking of testimony?

Mr. McCOURT.—I would prefer that it should not be limited. However, I can indicate, I think, that the Government will be prepared to take that testimony between the first and tenth of June, but something might happen to interfere.

COURT.—I suppose it is the plan to defer the argument of these cases until the testimony is all in, necessarily. It would be quite a convenience to the court if the testimony could be taken and the argument had at as early a date as convenient to counsel, while the matter is fresh in the mind of the court.

Mr. UELAND.—Could we enter the order to the effect that the taking of testimony is to be concluded as late as, let us say, June 20th?

Mr. LIND.—To be submitted, at the convenience of the Court, before the 1st of July, say.

Mr. McCOURT.—Make that June 25th so as to give me as much time as possible.

Mr. UELAND.—Yes. Let the order be entered on the minutes. Should we prepare the order?

COURT.—You might prepare it, Mr. Ueland, I expect. Then we might just as well set the case down for argument now, to suit counsel's convenience, and then it will be on the calendar.

Mr. UELAND.—We would say, as far as we are concerned, any time between the 15th of June and the 1st of July, to suit the district attorney. [670—699]

Mr. McCOURT.—I would prefer, I think, that the argument be set for some date in July.

COURT.—Well whatever date is convenient to counsel will be satisfactory to the court, in June or July.

Mr. McCOURT.—Say the 10th or 12th of July—somewhere about that date.

COURT.—Monday is the 11th. Will that be satisfactory?

MR. UELAND.—That will be satisfactory. And another matter—we will like the privilege to withdraw, for use before the examiner to be appointed, United States Exhibits 155 to 161, inclusive. They constitute those deeds, the deed of June 4, 1906, to the Linn & Lane Timber Company, from Smith and wife, and the other deeds, the Werner deed, and the Swansen deed, and the deed put in for comparison. Either we would have to have the privilege to withdraw them and take them with us, or they would have to be remitted to the examiner officially. It does not make much difference—whatever the district attorney prefers in that respect.

Mr. McCOURT.—I haven't any fear of them being in the hands of counsel, yet the regular course,

I presume, would be for the clerk here to transmit them to the examiner.

COURT.—He can do that. The order may be that the clerk may transmit them to the examiner, or any other exhibits that have been offered here by either party.

Mr. UELAND.—Very well.

Mr. McCOURT.—The order may show that, and if you think of any exhibits later, just instruct the clerk to transmit them.

Whereupon recess was taken until 2 P. M. [671—700]

Portland, Oregon, May 3, 1910, 2 P. M.

[**Testimony of S. A. D. Puter, for the Government.**]

S. A. D. PUTER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Q. Where do you live, Mr. Puter?

A. My home is in Berkeley, but I have an office here in Portland where I reside most of the time.

Q. What business are you engaged in, Mr. Puter?

A. Dealing in timber lands.

Q. How long have you been engaged in the timber land or public land business? A. Since 1888.

Q. How long have you been engaged in that business in Oregon? A. Since about 1889.

Q. Where were you—where did you deal in timber lands prior to coming to Oregon?

A. Humboldt County, California.

Q. And during the time that you have been deal-

(Testimony of S. A. D. Puter.)

ing in lands in Oregon have you dealt in lands elsewhere? A. Yes, sir.

Q. Where, mostly?

A. Oh, in Washington and some in Idaho.

Q. In California? A. Yes.

Q. Do you know Horace G. McKinley?

A. Yes, sir.

Q. And Daniel W. Tarpley?

A. Yes, sir.

Q. When did you become acquainted with Mr. McKinley?

A. I think it was in about 1891 or '2.

Q. What business was he engaged in at the time you became acquainted with him? [672—709]

A. Well, he was living at Brownsville, Oregon, and dealing in timber lands for his father at that time.

Q. Where did his father live at that time, if you know? A. West Salem, Wisconsin.

Q. And when did you, if ever—when did you and Mr. McKinley commence operating together in the purchase and sale of lands?

A. Well, I worked with him in 1892 and '3, curing titles for him; that is, I furnished him scrip. And I think we commenced to deal jointly together in the fall of 1903—1893 or '94.

Q. What sort of scrip were you handling those days?

A. Well, what is called indemnity school land.

Q. And how long did you continue to operate with Mr. McKinley after 1893 or 94?

(Testimony of S. A. D. Puter.)

A. Well, I believe, up until 1904 or '05, somewhere along.

Q. When did Mr. Tarpley become identified with you and Mr. McKinley in the acquisition of lands—sale of lands?

A. Well, that was close to the year 1900—may have been 1888—'89.

Q. 1899? A. 1899.

Q. What was Mr. Tarpley's business when you first became acquainted with him?

A. Well, I believe he was—I learned that he was an attorney, but he hadn't been practicing though. Lived at Salem.

Q. Well, how long did he continue to operate with you and McKinley in the land business?

A. Oh, I think he—he done a little off and on up from that time until 1894.

Q. 1904? A. 1904.

Q. Basil H. Wagner—do you know him? [673—710] A. Yes, sir.

Q. Where did you become acquainted with him?

A. I believe that he—he was one of the assistant clerks in the State Land Office when I first met him.

Q. You had business there in school lands?

A. Yes, sir.

Q. And when did he, if ever, become an assistant to yourself and Mr. McKinley?

A. Well, he never became very much of an assistant to me, but he did to McKinley, though, in transactions that McKinley and I was interested in. He

(Testimony of S. A. D. Puter.)

operated entirely—mostly, with McKinley.

Q. Are you acquainted with C. A. Smith?

A. Yes, sir.

Q. One of the defendants in this case?

A. Yes, sir.

Q. When did you become acquainted with Mr. Smith?

A. Well, really I can't tell the exact date, but it was very early in 1900. I thought it may have been in the fall of 1899.

Q. And was that acquaintance one in which you and Mr. Smith met frequently? A. Sir?

Q. And was that acquaintance one in which you and Mr. Smith met frequently? A. Yes, sir.

Q. Now, do you recall the matter of the acquisition of some 33 claims in Linn County, township 14—2 and 3, is it? Or 3 and 4? A. I do.

Q. Do you recall the circumstances under which you became [674—711] connected with those claims or interested in them? A. Yes, sir.

Q. State to the Court those circumstances.

A. I believe it was in the month of January, 1900, that McKinley informed me of some two or three townships in Linn County, I believe it was 14—2 and 3 and 4 South—14 South, 2, 3 and 4 East—that was surveyed and accepted and was subject to entry, and containing a large amount of good timber land; and wanted to know if we couldn't enter into some scheme for to procure title to the land. Well, I believe we talked the matter over for a week or ten days. He told me that there was other parties in

(Testimony of S. A. D. Puter.)

there looking at the land and that we would have to act pretty quick to see if we may scrip it. A man by the name of Jack D'Arcy was after it; so we concluded then that we would locate a lot of people under the Timber and Stone Act, and furnish the money to prove up on with a view of procuring the title. And we concluded that at the present value of the land, that we could afford to pay the entrymen \$100 each for their right, we to pay the Government whatever the cost was of procuring title. So as we had little time to act, we went at it and McKinley procured a large majority of the people, I think 57 all told. The only ones I procured was my wife and I think Mrs. Jacobs and her daughter. Well, the understanding we had—I instructed McKinley—was not to let those people know that—that is, not to talk personally with them in regard to the way we expected to obtain title, but to convey that idea to them through some friend, Tarpley or Wagner or some one that we had *explicit* confidence in, that they were to receive \$100 for their right, and that was all there was to it; but under no circumstances was he to talk to any of the entrymen. Well, [675—712] I believe there was a large number of filings made in January. We procured the entrymen from Roseburg, Albany and Brownsville and some in Portland. And I concluded then to go east, as it was pre-arranged with McKinley and I that I should find a customer who would advance the money; and we had fixed at a price between ourselves that we thought the land ought to be worth. I think it was about \$7.00 an acre. So I went east.

(Testimony of S. A. D. Puter.)

I think it was in January—might have been February—but at any rate it was after a lot of filings was made, and just before they were all made. And I don't know whether I had seen C. A. Smith first or some other parties. At any rate, I seen him on the trip and I talked with him about another tract of land that I had in Oregon, as we had previously had a contract on 60 quarter sections that we had fell down on, and I wanted to know if he—how would he like to take it up. And he asked me where it was located and I told him in Linn County; how much there was; I told him some—between eight and nine thousand acres; he wanted to know what it would cost and I told him I thought I could deliver title for, I think it was, \$7.00 or \$7.50 an acre. Well, then he requested me to call on his agent, Fred A. Kribs, in San Francisco, as he had previously given me a letter of introduction to Kribs; and that whatever trade I made with Mr. Kribs in regard to Oregon lands would be entirely satisfactory with him and he would stay by it. So I think while I was east, I called on one or two other parties and I talked to them also about the matter. One man, I think, in Duluth; another man in—I think it was Saginaw, Michigan. But at any rate, I was banking on Mr. Smith, as I thought he was the best customer, although I concluded to have the other fellows in tow for [676—713] fear he would fall down on it. So at any rate, I went on to San Francisco, and I spoke to Mr. Kribs about it and told him the situation. He said that he would come to Oregon and he would look the matter over and if it

(Testimony of S. A. D. Puter.)

was all right he would take it up with me. So I believe I met him a few weeks after that—a short time. He wanted to know what it was going to cost, and I told him that title hadn't been perfected to these lands, but I expected that I would be able to get them at a certain figure and there would be a certain amount of money required to make proof on the lands, and I would like to have him advance that money. Well, at that time he hesitated about advancing the money. He said he would go up and see about it. Well, the best of my recollection is he had come up and he had met McKinley; I had either introduced him to McKinley or given him a letter; but at any rate he went up to the lands with McKinley and Tarpley or either one of them, and was satisfied to advance the money. I told him it would be necessary for to have at least \$600 on the quarter section. And that I—I thought that I would, under the circumstances—having an equity in the land, etc.—I would be able to get hold of those lands after they proved up, and I could turn the title over to him for a certain figure. Well, there wasn't much said then. He didn't say whether he would advance the money or not. At any rate I know the Northern Pacific filed a contest against all those entries, and I went back on to Kribs again and I told him the circumstances, that I had to have somebody to back us up in the lands and that I thought I would be able to secure the lands for \$7.00 or a little less—or \$6.50. Well, at any rate, he agreed to—he said that [677—714] as we was in the deal, etc., that he would stand by and advance

(Testimony of S. A. D. Puter.)

the money to make proof on those lands. So it seems that the contest was set for the same day that the proof was to be made, and of course it was necessary to have the money there, but Kribs hesitated about having the money at that time. He thought it would not be necessary to have the money there for probably some time afterwards, as the testimony would be taken and would be submitted to the General Land Office before any money, but I insisted that I thought there would be a compromise; that the Northern Pacific wouldn't appear on the case and it was best to get the money there. So he agreed—he said he would wire Mr. Smith to forward the money, and he did—informed me that the money was there. So we all went to Roseburg on the day that proof was to be taken, and the contest, and I think the contest cases started in first, which lasted about two days; and I believe I employed Mr. Crawford and Shupe. I paid them \$500 to defend me in the 57 cases. And Mr. Mays and Moulton and one or two other attorneys from St. Paul represented the Northern Pacific. Well, the first witness, I believe, was myself, or Basil Wagner—I don't know which. At any rate, Mays, he done the cross-examining for the Northern Pacific attorneys—cross-examined. We put up a pretty good case and he come up into my room, I think it was the second night about eleven o'clock at night, and he said to me: "Now, Puter, you have made a pretty good showing in this case, and the Northern Pacific attorneys is getting a little scared." He says, "I think it is a pretty good proposition for to compromise this and divide this

(Testimony of S. A. D. Puter.)

tract." He says, "Just as sure as you let it go to trial and let those entrymen [678—715] take the stand, they will go like chaff before the wind and you fellows will all go over the road." So we sat up that night with Moulton and Mays and talked the matter over and finally made a settlement that we should give up 24 claims and retain 33; and the understanding at that time was that—from Mr. Moulton or from one of the attorneys, I don't know which, or from Mays—that they would give me those 24 claims at the market price. So proof was submitted on the 33, or at least on some twenty odd that was advertised for that date, and certificates issued. Now, as McKinley and I had made arrangements to pay these fellows a hundred dollars each and that idea was conveyed to them some way through some of those parties—because they all understood it, that that was the situation of the case, everyone of them—I believe the mortgages was drawn up and we both went to work that same day in procuring deeds. Some of the deeds I believe was dated—at least left blank, and I believe I paid some of the entrymen right there and then, a few of them, so far as my money went. But anyway, inside of ten days, I had procured the deeds to what proofs was made, and I met Mr. Kribs at Albany and told him that I had procured deeds to all of these lands and if he wanted it for that figure, he could take it—have them. So he then and there paid me the money. I think it was \$5.00 per quarter—or \$5.50 an acre, that we had agreed upon, and he paid me all except \$1,000 which he said that Smith had

(Testimony of S. A. D. Puter.)

requested him to hold up until the patents was issued; there may be some trouble in getting patents,—some costs, and he wanted to hold out a little. So I consented and a few weeks after that the proof was put in to the other claims, and I don't recollect now whether I procured the [679—716] deeds for that or how they were gotten, but I think they were about the same way, and there was another settlement made. And the last payment was made of a thousand dollars along in December that same year, which happened to be paid to me on another transaction, so that ended the transaction with Kribs so far as it went, up before the patents was issued.

Q. In the meantime, between the time that you first saw Kribs in California in relation to the claims, and the time that the proofs were made, how often did you see Mr. Smith and talk with him in regard to the matter? A. Between what time?

Mr. LIND.—I didn't hear that question.

Q. (Read.)

A. Well, that I can't exactly tell. I may have met him the second time. I was under the impression that I had met Smith at Albany before the proofs was made, but that I am not positive of.

Q. Well, when you did meet him at Albany, what did you and he do there at Albany or where did you go?

A. We went up to look at the lands. We went to Lebanon, hired a team, went to the Mealey brothers that night. Stayed all night and the next day we went over several sections and back to Mealey's. While on the ground we estimated an

(Testimony of S. A. D. Puter.)

acre here and there—looked over the timber.

Q. In your conversation with Mr. Smith there, before you went to—there before you went out to see Kribs, or rather, until you received that final payment in December, there, did you have any discussion with him generally as to how the claims had been taken?

Mr. UELAND.—We object to that as too indefinite. It makes a good deal of difference whether the conversation was prior to the entries and sale or subsequent to the [680—717] entries and sale and prior to the payment of the thousand dollars. I think the question should not be as general as that.

COURT.—Let him fix the conversation definitely, if he can.

Q. Prior to the time when you saw Puter at San Francisco there—

A. Kribs.

Q. Or Kribs—beg your pardon. Did you have any conversation with Mr. Smith as to the character of these entries, the character of the title that you had there?

A. Oh, I only told him that I could procure him eight or nine or ten thousand acres of lands at, I thought, about \$7.00 per acre.

Q. What I want to know is whether you discussed with him at that time or any time previous thereto, the method by which you were securing the title?

A. No, I don't think I did previous to that time.

Q. I call your attention to Government's Exhibit 179 as it appears in the record, and ask you to read that.

A. Yes, sir, I recollect distinctly about that.

(Testimony of S. A. D. Puter.)

Q. Now, you notice the exhibit there refers to conversations had between you and Mr. Smith relative to the contest of the Northern Pacific. Now, what conversations and where had you had them with Mr. Smith relative to that matter?

A. Well, now, this is a conversation—

Q. Prior to July, 1900?

A. This refers to the 24 claims the Northern Pacific had. Now, that conversation there took place in his office in Minneapolis, or probably on the ground when he was on the land, because it was—this conversation took place after [681—718] proof was made; probably a month—two months, and I had told Mr. Smith that I was going to get the 24 claims that we give up, because he understood that I had in the neighborhood of eight or nine thousand acres in the start. I told him 57 claims. The understanding with the Northern Pacific was that they were to give me these lands as soon as they were patented at the market price, which was seven or eight dollars per acre, as I told him. And it seems that those lands was due about three months after the proofs, and he was thinking that it was about time that those patents should be issued, and he was asking me about it.

Q. Patents of the Northern Pacific scrip selections?

A. Yes, as it generally takes about ninety days for a patent to issue—in those days—on a selection.

Q. That is, on a scrip selection?

A. Yes.

Q. And in those conversations did you go into details with him as to the grounds of the contest

(Testimony of S. A. D. Puter.)

that had been instituted by the Northern Pacific—

A. Yes.

Q. —railroad against the claims.

Mr. LIND.—That is immaterial at that stage. It is subsequent to the making of final proof and transfer to the defendants.

COURT.—Prior to the issuance of patents?

Mr. McCOURT.—A year—two years prior to the issuance of patents.

COURT.—It will be admitted.

A. Yes, I told him that that was a contest on this lot of land and that I had compromised with the Northern Pacific [682—719] and in order to avoid any litigation or suit we concluded the best that we could do was to give up 24 claims with the understanding that I was to get them back at the market price when patents issued.

Q. Now, how frequently did you see Mr. Smith in relation to those lands either directly or incidentally from the time the proof was made, say, the time you and he were down in the timber, until December, 1900, when you got final payment?

A. Oh, I met him, I think, a number of times. I had some other deals with him in California and talked about this every time we met; may be three or four or five times.

Q. Well, how much in detail did you ever go into the method pursued by yourself and McKinley in acquiring the lands, with Mr. Smith at that time?

Mr. UELAND.—The defendants we represent object to that as incompetent, irrelevant and immaterial, for the reason that there is no fraud charged in the bill as a ground for vacating these patents,

(Testimony of S. A. D. Puter.)

except in connection with making the entries.

Objection overruled; exception saved. [683—720]

(Question read.)

A. Oh, I don't think there was much said during that time. When he would speak to me it was simply about the 24 claims, and he didn't talk very much to me until there was Government proceedings, or special agents working on the deal, and then he was frequently writing and after me to do what I could to secure patents, etc.

Q. Well, did you have any conversations with him in relation to those matters?

A. Oh, yes.

Mr. LIND.—What matters? Now, that is indefinite.

Mr. McCOURT.—What he just testified about.

Mr. LIND.—In regard to the patents, you mean?

A. Yes.

COURT.—And special agents—investigations by special agents of Government?

Mr. UELAND.—May it please the Court, may all this be covered by the same objection without repeating it?

COURT.—Yes. There is some testimony up to this time, showing Mr. Kribs was engaged with Mr. Smith in reference to false statements by the entrymen to the special agents. I presume that is what counsel had reference to.

Mr. UELAND.—We claim it is not competent against the defendants we represent because the bill does not charge any fraud in that connection.

COURT.—I understand your position. It will

(Testimony of S. A. D. Puter.)

be admitted subject to that objection.

Q. Well, what conversations did you have with him in regard to the investigation made by the agent and the question [684—721] of the validity of the claims.

A. It seems as soon as Smith found out the land was being investigated, he kept after me continually, and asking my advice, and what was to be done, etc., and although I considered I was out of the thing practically, but morally I was supposed to look after the title and do what I could to issue the patents, and I would advise in the matter. And I had told him *tha* special agents in Oregon was very friendly, and there was good reports being made, etc. on the land, and procuring the affidavits from the entrymen; but at the same time, there ought to be a little work done at Washington to help the thing along. And so he would give me letters to a prominent attorney there, and also he requested that I would call on Eddy and Nelson there, State senator, and that he would write him a personal letter to see me, and that I would explain the situation thoroughly to him, and act accordingly. So I started to Washington, but it seems that there was something else had to be done, or some other proceedings that Mr. Kribs had wired Smith in the meantime, and when I arrived at Washington, I received a wire or two from Smith not to see Eddy and Nelson, or do anything; that he had heard from Oregon, and to wait, or something to that effect. So we talked the matter over frequently after that all along until patent was issued.

Q. Well, now, in that matter of advice that you

(Testimony of S. A. D. Puter.)

were giving to Mr. Smith there, prior to the time you took the letter to Mr. Belt, did you go into detail with him as to the character of the claims, and what showing would be necessary to overcome their weakness, if any? [685—722]

A. Well, I must have went into that pretty thoroughly; told him what was necessary to be done, and what we had done in the way of procuring affidavits, and what the special agents had reported, and the affidavit I had made myself; but still we needed more work, etc., and any thing that he could do or suggest—I thought he had a good deal of influence through some of his State Senators that was in Washington; and I suggested that to him. So he thought it a good plan.

Q. Do you have any knowledge yourself of the employment of Mr. Pierce Mays by Mr. Kribs in relation to those claims? A. Oh, yes; yes.

Q. What is your knowledge of that?

A. Well, it seems that after Kribs had got a title to the land there was an investigation ordered, and of course he come to me about it—I ought to stay with him on this thing and help him out. So I did—done what I could. And I suggested that he would see Pierce Mays, that I thought he had a pretty good pull at Washington with the senators there, and he better employ him. And he did, and agreed to give him \$50. a claim.

Q. Did Mr. Kribs tell you that too?

A. Yes.

Q. That he did employ him?

A. Yes. Mays took the case at \$50 an entry, for

(Testimony of S. A. D. Puter.)

to see them through to patent.

Q. And do you have any personal knowledge of the employment of the firm of Mitchell & Tanner in connection with that?

A. Yes. It seems that Mays was getting along and wasn't doing anything. Kribs complained to me that he had agreed to pay him \$50 a claim, and he wasn't doing anything; [686—723] the thing was dragging along, and Smith was getting anxious. So I suggested then that he get acquainted with Senator Mitchell—insisted on it that he would—and see what he could do. So I learned afterwards that he did solicit the Senator, and through him the patents was procured.

Q. What connection, if any, did you have with the relationship existing between Kribs and Stratford in taking the affidavits upon the claims?

A. Well, the first time I met Stratford, was in the McClellen House, I think it was. Mr. Kribs introduced me to him. I had very little to say. And some time after that Stratford come to me with an affidavit for me to sign. It was at the time that we were procuring the affidavits from all the entrymen, and this was one covering the entire tract—what knowledge I had of it. And that is the only time I ever met Stratford.

Q. Well, did you prepare that affidavit?

A. No, sir.

Q. Who did?

A. Well, I don't know. Stratford handed it to me, and told me to read it over, and if I didn't think that was about the facts. And I said most assuredly

(Testimony of S. A. D. Puter.)

it was; I couldn't write it up any better myself; but at the same time I objected to signing it at the time—that I would like to have the privilege of dictating it at least; but it was all right anyway—I couldn't do any better—so I signed it.

Q. What was the fact as to that affidavit stating the truth or the reverse?

Mr. LIND.—That I object to. If counsel wants to [687—724] cross-examine that affidavit, it should be done in an orderly way. Let the portions that counsel assails be read in the record.

Mr. McCOURT.—Well, I don't care anything about it now, except I think I am entitled to an answer as to whether it was designed to represent the truth.

COURT.—I suppose he can testify to that, but not to the general details of the affidavit without you produce it here.

A. What do you want me to testify?

Q. I want to know whether or not that affidavit that you made there was designed to represent the truth.

A. Well, in a few instances it was; in a great many it was not. It was quite a lengthy affidavit.

Q. Did Mr. Kribs make any statement to you as to, pending the time when this investigation was going on, as to the transactions he had had with Stratford, or was having with him?

A. No, I don't think Kribs had ever talked about Stratford much. He mentioned to me to round up those people and get them before Stratford; but I didn't have the time. I had to get McKinley or Tar-

(Testimony of S. A. D. Puter.)

pley to do it. I was going away. And he said he was here, and he was rushed to get those affidavits as fast as he could, and Stratford was on the ground, and willing to go to Brownsville, or anywhere else where he could find them, and he wanted me to help him out.

Q. Well, you talked with McKinley about it?

A. Yes.

Q. And what instructions, if any, or what did you and McKinley determine on as to the material to be in those [688—725] affidavits?

A. What is that?

Q. What arrangements did you make with McKinley or with Kribs as to what should be the substance of the affidavits?

A. Well, McKinley felt just exactly as I did—that we ought to do just as much as we could to help the matter out and round those fellows up, and get their affidavits, and talk to them, and insist that they would make certain affidavits showing that everything was straight, etc. And he was morally bound to do that anyhow.

Q. Now, as to the payments to Mays and to Mitchell & Tanner, to the different entrymen, if there were any, or to special agents, was that expense stood by you and McKinley, or who did stand it? Who paid it?

A. Well, we didn't stand it. We didn't pay it.

Q. Do you know whether Mr. Smith knew anything about those payments?

A. Well, Mr. Smith knew about the amounts, etc., because he had—

Q. How do you know that?

(Testimony of S. A. D. Puter.)

A. Well, some time when I was closing the Humboldt account deal with him—I think that was in 1904, just right after the 11-7 trial, and during the time that these 33 entrymen was being examined here for the purpose of taking them before the Grand Jury, at that time—no, I am mistaken—just take that out—it was just about 10 days or two weeks before the patents issued, Mr. Kribs had informed me that he had a telegram from Washington to the effect that the 33 entries was passed to patent; that meant that they would be written up in a few days. And it looked as if Smith was going to hold me up on a lot of money [689—726] that was due me in Humboldt County on a redwood deal, because I had fell down on the transaction by 2,000 or 3,000 acres,—there was some 33,000 acres, and I only delivered 30,000—and that it would be a good time now for to go back and force Smith to pay me this money. So I concluded to go back. And when I called Mr. Kribs up and told him what I was going to do, that unless Smith paid me that money forthwith, I was going right straight to Washington, and go to Hitchcock and repudiate the affidavit that I had made, and request Mays at Washington City to go right on and see Mr. Hermann and hold the patents up until I would settle with Smith; and if Smith made the settlement with me, that I would wire him, and let the claims go to patent. I called on Smith, and after wrangling about two days with his private secretary, Charley Trabert, and going over the Humboldt County account, we concluded that there was the sum of \$10,645 due me, which is the amount I claimed. And it was

(Testimony of S. A. D. Puter.)

at that time that Smith handed—shoved, an account against the Oregon entries amounting to some \$4,000 or \$5,000, that he wanted deducted out of that claim. All I was getting at this time was the actual cost to me, which I had paid out on the lands, forfeiting all my commissions.

Q. That is on the Humboldt deal?

A. Yes. And glancing over the item, I seen a certain sum to Senator Mitchell, a certain sum to Pierce Mays, to Stratford, Loomis, some other payments—I don't know what—but to the amount of \$4,000 or \$5,000; and I just bucked right there, and says, "No, sir, nothing of the kind. The whole thing is off. I won't pay a cent of it." And so Smith passed it up, and he gave me a due bill of \$10,645. Now, that is the [690—727] first knowledge that I had that Smith of course knew of those payments. That was about three weeks—probably that was on the 24th day of April that I received that due bill, and I am positive that three or four or five days before that time—it was two or three—about four days that Mr. Kribs informed me that he had heard from Washington.

Q. Well, how does the date of the due bill accord with the date that Smith showed you this list of expenses of payments made he wanted to show you?

A. That was the same date.

Q. That was the 24th of April, 1902?

A. The 24th day of April, 1902.

Q. What did you do when he signed up the due bill without exacting the payment of those other moneys, as to the patents, as to Mays?

(Testimony of S. A. D. Puter.)

A. Well, he seen in a minute that I wasn't going to stand for that at all. It was simply, a bluff, I believe, on his part in the first place, thinking that I might; but I cut it all out, and he handed me the due bill, and I accepted.

Q. Now, then, on the date that proof was made back there, Mr. Puter, in 1900, the proofs made in April, there were quite a large number of the entrymen—something like fifteen or twenty, who were paid something like \$100 a piece. Where did you get that money with which to pay those entrymen?

A. Well, I paid a few of them, as far as my own money went, and the rest of it come from Kribs.

Q. Do you recall now how much Kribs advanced for that purpose at that time?

A. When I sent for Kribs I think he come to Albany, and [691—728] I had in my pocket the deeds then to the entire tract. That is, some 23 names, I think, or 24, that was proof made on.

Q. Yes, but I am speaking of the money that you paid those entrymen the day of proof there.

A. The time they made proof?

A. Yes. When you paid them \$100 apiece there in Roseburg, how much of that money did Mr. Kribs advance to you?

A. Oh, I think at Roseburg there was not very much money paid. There was a few paid, and I believe that was my own money. When I paid those men, was in fact about a week afterwards—most of them.

Q. Well, but you took the deeds right there in Roseburg. You didn't get away without?

(Testimony of S. A. D. Puter.)

A. Oh, well, there was some that I did not pay until a little while afterwards. They had my word for that, and some I paid right down.

Q. Which ones took your word for it now?

A. That I could not tell. In fact, I could not tell who I paid. And all I recollect is that I know that we were short of money, and I would say to them, "I want a deed. Pay you to-morrow or next day; going to transfer the property over." And then at the same time I had probably ten or fifteen of the deeds in my pocket. I don't know whether there was that many, but I had a number of deeds the very day that the mortgage was made. But I didn't pay them all that day. I paid them afterwards.

Q. What function did that mortgage have there when you took a deed at the same time? What was the purpose of that mortgage? [692—729]

A. Well, that was the purpose of that mortgage was McKinley and I when we first went into the scheme was that that would be a good plan in order to throw anyone off the track.

Q. As to the real character of the transaction?

A. Yes; to take a mortgage on the land.

Q. What did Mr. John A. Willd have to do with the transaction at that time or any other time?

A. Well, really I don't know. All I know is when I spoke to Mr. Kribs who would I get that—I was going to get those deeds, you know—he requested me to have them made over to John A. Willd.

Q. Did he tell you who John A. Willd was?

A. Yes, I believe he did. He said he was a stockholder or some distant relative of C. A. Smith.

(Testimony of S. A. D. Puter.)

Q. Well, now, how long was it before the proof, Mr. Puter, that you arranged with Kribs that he should take the land?

A. Well, I will tell you—there was nothing definite about that. It seems to be an understanding. I believe Kribs knew that he was to get this land, but there was no direct conversation about it. I said to Mr. Kribs that “I will be able to deliver—I think I can get those claims at a certain figure.” He didn’t say anything, yes or no. But I understood from his actions that he was willing to take it. He didn’t say no nor yes.

Q. Well, you knew he was willing to take it?

A. We went on the theory—

Q. Before the first proofs were made?

A. What is that?

Q. You knew that he was willing to take the land before the first proofs were made?

A. Well, I surmised that in my own mind. I thought he was. [693—730] I didn’t think that it was exactly for the interest that there was in \$600 when he agreed to advance \$600 on a mortgage; that it was pretty sure that he would take this land, although we did not have a definite understanding all together.

Q. You did not. Well, what did you take a deed on the same day you took a mortgage if you did not have a definite understanding?

A. Well, that was between the entrymen, and we wanted to be—

Q. Yes, I know. But supposing Kribs had just kept that deed and not paid you any more money at

(Testimony of S. A. D. Puter.)

all, didn't he have a deed?

A. Why, no, I had the deed, and he never got possession of it till I got the money.

Q. You kept the deed in your pocket?

A. Yes, sir.

Q. You didn't deliver it to him? A. No.

Q. You didn't know he was going to take the land?

A. I kind of suspected he would. I had a pretty good idea he was going to take it, although he didn't say so.

Q. Hadn't you agreed upon the price that he would take it at?

A. I told him that I could deliver those goods at a certain figure.

Q. How much?

A. Well, I think it was, when we got into the law suit, Kribs was going—in the first place, he was going to advance \$6.00 an acre. I says like this, says I, "I will take \$6.00 an acre for the lands. I think we can procure title for \$6.00 an acre."

Q. That is the law suit of the Northern Pacific you are [694—731] talking about?

A. Well, this was before. I says, "I will have to have a loan of \$600 a claim." Now, he didn't say he would take it or not. But when the lawsuit commenced with the Northern Pacific, Kribs backed out, didn't want to go into it, and I come down then to \$5.50 an acre and then in order to get us out of the hole, he said he would stand by us and help us out in the matter. And it is then was when I told him I thought I could deliver those claims, get a

(Testimony of S. A. D. Puter.)

title to those claims for that price. He didn't say anything. So I went right on and got the title just the same.

Q. Where did you get the money with which you paid the Northern Pacific entrymen that relinquished?

A. Well, now, I might have borrowed that from Kribs, or may have put it up. I don't know. I paid \$25 apiece to 24 men. That would be—

Q. \$1,200.

A. How much? Yes, \$1,200. No, \$400.

Q. \$600, yes. A. Yes, \$600.

Q. Did you get those relinquishments yourself, or how were they gotten? Who got them?

A. I think I got most of them. I know I had a pretty hard time, because when the case was settled, they all wanted to get their \$100 and I had to take such ones as I could get a relinquishment out of the fifty-seven.

Q. Now, when you first went to talk to McKinley about this transaction up there at Albany, do you remember W. R. Mealey being there? [695—732]

A. No, I do not.

Q. You got in late at night at the hotel, and Mealey was there. Mealey was the man, wasn't he, who put you people onto these lands?

A. Yes. When McKinley told me first about the land, and what Mealey knew, I sent for Mealey, and he came to Albany and met me there. I entered into a contract with Mealey to give him \$10 each for what claims that he would give me, that would cut a certain amount per acre. I think he got—he fur—

(Testimony of S. A. D. Puter.)

nished, oh, probably thirty odd.

Q. And what was the amount per acre?

A. It was \$10 a quarter section.

Q. Oh, \$10 a quarter section—\$40 a quarter?

A. No, ten. Yes, \$40 a quarter section.

Q. Or I mean a section.

A. Yes, a section. \$10 an entry.

Q. And after you had employed him to locate those quarter sections, what other services did you require of Mr. Mealey in connection with this whole matter?

A. Well, I believe I paid him \$100 to cut a trail through the timber.

Q. What was the purpose of that trail?

A. Well, that trail was cut—we didn't know exactly who would come out there, but expected to be some fellow, you know, some old man that could not go through the woods, that would have to go horse-back, and we had that trail cut for the party to come through to look at the lands to see that the value was there before they would loan the money. That was the original understanding why we had the trail cut.

Q. In those mortgages with Mr. Kribs there, he never gave you any \$600 for each entry—he never put you up that [696—733] much cash?

A. Well, now, that is pretty hard for me to remember. It required \$430 to the Land Office—at least about \$411. Then there was advertising, and he may have given me the money there that time for to pay those 24 claims. I don't recollect.

Q. Now, I notice, Mr. Puter, that your bank ac-

(Testimony of S. A. D. Puter.)

count at Roseburg which you opened on the 19th of May, 1900, shows a deposit of \$4,000 on that day, that being the date of the first proofs?

A. That was the date of the first proof?

Q. Yes. A. I thought it was in April.

Q. Yes, April 19th.

A. You say May there?

Q. No, April 19, 1900, you deposited \$4,000 in the Roseburg bank—First National Bank.

A. Yes.

Q. Where did you get that \$4,000, do you remember? Did you have any \$4,000 of your own at that time?

A. No, I don't think I had. I might have had part of it, but that money was deposited there by me for the purpose of paying off those entrymen at \$100 apiece, and for the 24 men. Now, I may have borrowed, I may have got that money from Fred. I must have got it from him, for I didn't have that amount.

Q. And on that same day you drew out \$840 of it as shown by the records of the bank?

A. \$840?

Q. Yes. And on the next day, the 20th, you drew out about \$3,000—\$2,700. There is a memorandum of it. A. The next day? [697—734]

Q. Yes.

A. Now, the best of my recollection on that transaction was that Fred Kribs advanced me most of that money. In fact, he advanced all of the money, that is, the \$600 *f* the entry. This must have been the difference between what went to the

(Testimony of S. A. D. Puter.)

Land Office and the \$600, I am inclined to think, or something like that.

Q. You didn't handle any of the money that went to the Land Office?

A. No. I don't know who paid that—haven't the least—I have an idea who paid it, but I never seen it paid.

Q. You knew that was paid?

A. I knew it was paid.

Q. Mr. Kribs assured you that he would pay it?

A. Well, he was to pay the \$600 on the mortgage, and the Land Office fee was to come out of that \$600.

Q. Now, I want to call your attention to a telegram which is marked "Government's Exhibit 183" from yourself to Smith dated January 19, 1901, and tell the Court what it refers to.

A. This is 1901. "Washington, D. C., January 19, 1901. C. A. Smith. Fred wires sworn statements sent Stratford follows in few days. Haven't spoken to anyone here. Leave for Chicago tomorrow. S. A. D. Puter."

Q. I show you the original here.

A. Well, that is the same thing.

Q. What does it refer to?

A. Well, that was at the time that, just a few days before that time is when I had seen Smith in Minneapolis, and we had talked the matter over about calling on those Senators. And I went on to Washington. Fred sent me a wire in regard to the affidavits that was made by Stratford [698—735] and others that they had been forwarded to Washington. And I simply notified Smith of that—sent

(Testimony of S. A. D. Puter.)

him a wire. I don't know—

Q. What statements did it refer to?

A. Well, you see there was a lot of those people that we didn't get statements from until some time afterwards, and it referred to those. I think Stratford had made a second trip, and had procured those that we didn't have.

Q. Those were the affidavits relating to these claims in controversy? A. Yes, certainly.

Q. Which the entrymen made? A. Yes.

Q. Like the affidavit that you made, that you speak of? A. Yes.

Q. Now, in your first conversation with Mr. Smith, when he introduced you to Mr. Kribs, gave you a letter of introduction to Mr. Kribs, what statement did he make as to Mr. Kribs' connection with him, or his authority for him?

A. He told me Mr. Kribs was—whatever Mr. Kribs said or done he would stand by; that he was out there looking after lands for him, and that he was his land agent; whatever trade that I made with him, it was the same as making it with Smith.

Q. And how long did Mr. Kribs continue in that capacity, to your knowledge?

A. Well, I supposed he had up to the present time as far as I know.

Q. How long did you continue to transact business with him as the agent of Mr. Smith after that time?

Mr. LIND.—That is leading and objected to

Mr. UELAND.—And it calls for a conclusion as to the capacity. [699—736]

(Testimony of S. A. D. Puter.)

COURT.—Yes, he can testify to what transactions he had with Mr. Kribs, assuming him to represent Smith.

A. Well, that is about the only transaction that I had, I think, that 14-3, 2, 3 and 4.

Q. Well, now, did the relation between them change any up to the time the patents were issued?

Mr. UELAND.—That calls for a conclusion, too, I think, if the Court please.

COURT.—As far as he knows. As far as the witness knows. He says his understanding was it continued down to the present time.

A. Well, I had business with Mr. Kribs a good many times after that. I done business with Smith, or with Kribs that Smith hadn't anything to do with, although he was dealing with Smith. He had other men, you know, he was buying timber for.

Q. Besides Smith, that he was representing?

A. Yes.

Q. But in connection with these lands down until the time that they went to patent, who represented Mr. Smith here in Oregon relative to those lands?

A. Mr. Kribs.

Mr. LIND.—That calls for a conclusion. He has testified as to what he knew. What Smith said to him, what Kribs did.

Q. Well, when you were there at the time that that statement was made in April, 1902, did Smith have any conversation there at that time relative to the agency or representation of him by Mr. Kribs here in Oregon?

A. No, there wasn't anything said. It seems

(Testimony of S. A. D. Puter.)

from the year before that we modified our original contract in the Humboldt County lands, that I had forfeited all commission, [700—737] and all I was to get was the actual cost to me of those lands, and that was due and payable when the title was perfected, and to the other lands in Oregon. And that was very indefinite, the amount due me, and at this time, just before the patents issued, I went to find out exactly what was coming to me, and get it, and that is when I went after Smith pretty hard and let him know that I was going to Washington, and what I was going to do. That is when he gave me this due-bill, and we figured out the exact amount I had been out on those lands. And that is when he run in this other account.

Q. What I was asking you is whether Kribs was still representing Smith at that time?

A. Well, I supposed he was. I didn't know, but I supposed he was, and up to the present time.

Q. Did you have any conversation with him relative to those lands immediately before you started to Washnigton, or started to Minneapolis?

A. Yes, sir.

Q. At that time?

A. Mr. Kribs had informed me that Smith—I had ought to get my money out of him; that the thing was dragging along; unless I got it before those patents were issued, I wouldn't get it at all.

Q. I call your attention to "Government's Exhibits 182, 181, 180, 179," which are original letters to you delivered to the Government by the defendant, and ask you whether or not there were any other

(Testimony of S. A. D. Puter.)

letters delivered by you to Mr. Smith at the same time you delivered those to him.

A. Yes, I believe there were a few other letters in relation to these lands. [701—738]

Q. In relation to these lands? A. Yes.

Q. What were the circumstances of the delivery of those letters to Mr. Smith?

A. What is that?

Q. I say, why were they delivered to Mr. Smith, or what was the circumstances under which they were delivered to Mr. Smith?

A. Why those letters was delivered to Smith?

Q. Yes, those that you have in your hand, together with the others.

A. Oh, why, I wrote them, you mean, to him?

Q. No. A. Delivered them?

Q. He wrote them to you. You gave them to him. What were the circumstances under which you did give them to him?

A. Oh, I understand. Well, that was during the 11-7 trial, right afterwards, when I informed Mr. Heney about this fraud, and he had subpoenaed all those parties down here for to make affidavits, go before the Grand Jury in order to indict Mr. Smith and Kribs, I see it was a good opportunity at that time to get this money, because I had already commenced suit on Smith on the \$10,645. This was a year or two years after I had received the due-bill. He refused to pay me the money, because there was one of the claims not patented. That is the Houser claim. So it looked to me at that time it was a good time to have Mr. Smith indicted, and I told Mr.

(Testimony of S. A. D. Puter.)

Kribs that I had this old sore; I wanted it fixed up; unless Mr. Smith paid me this \$10,645 I was going to endeavor to have him indicted. And Mr. Kribs told me he would write him the full particulars. And he wired the money inside of four days. He settled the matter up. At the same time he requested—Mr. Kribs [702—739] or Smith, I don't know which—that I would give up all correspondence that I had. And I handed those letters over.

Q. And took your money?

A. What is that?

Q. And took your money? A. Yes, sir.

Mr. McCOURT.—Will counsel let me have the other correspondence that was delivered at that time?

Mr. UELAND.—We will, if we have it. (Hands counsel letter.) You just want the original letters?

Mr. McCOURT.—Yes.

COURT.—I would suggest that you get through with the oral examination of this witness.

Mr. UELAND.—I want to state, if the Court please, that I here hand the District Attorney all original correspondence that I have, and this that I lay aside here, consisting entirely of letters, is copies of C. A. Smith Lumber Company's communications to Puter, but not original correspondence.

Q. Do you recall the Josephine Jacobs claim, and the taking of her affidavit by Mr. Stratford or Mr. Loomis? A. Yes, sir.

Q. What were the circumstances of that?

A. Well, that was just exactly the same as all the

(Testimony of S. A. D. Puter.)

rest of them. The object was to get each one of the entrymen to make an affidavit that they had taken the land up in good faith, and had not made any trade or transaction to anybody whomsoever, etc.

Q. And do you know, or do you have any personal knowledge of the taking of that affidavit, by Mr. Loomis, by Mr. Stratford, or whichever one took it?

A. Well, I did not until after it was taken. I had heard. [703—740]

Q. Well, now, when did you hear that, and who from? A. What?

Mr. LIND.—That is objected to.

Q. When did you hear what you were about to state and whom from?

A. I think it was Mr. Loomis told me that he had called on—

COURT.—Loomis testified about that. It would not be binding on these people.

Q. Did you see Mrs. Jacobs in relation to giving the affidavit? A. Yes.

Q. Advised with her about giving it?

A. No, she had given it before I had seen it.

Q. Now, then, when you and Mr. McKinley formulated the idea of taking these lands up, was your purpose to earn a location fee or to earn a commission on the sale of the land, or a profit on the sale of the land?

A. Oh, the understanding between McKinley and I was to get some one to put up this money, and we was to pay the entrymen \$100 apiece and what-

(Testimony of S. A. D. Puter.)

ever we could make over and above the cost, we should divide between us, and we calculated to sell it between \$600 and \$700 per acre.

Q. Now, in relation to your own claim, when you divided afterwards, was that—

A. That went in just the same as the rest—no difference.

Q. The same as the rest. And how about your wife's claim? A. The same.

Q. And Mr. and Mrs. Jacobs,—no, Mrs. Jacobs and her daughter? A. All the same.

Q. All the same. The entryman Ira Pilkington—was he one? A. Yes.

Q. Of the parties you selected? [704—741]

A. Well, I don't know whether I had procured him or not. I hardly think so. I think McKinley got him.

Q. Now, in your division, did you get \$100 over and above—was there \$100 taken out, and half the profits divided, or how did you get yours, or was it just divided on the profit in your case?

A. Well, I kept an account. I paid about all the money to Mealey's, and for making trails, and railroad fare, and filing and advertising—filing fee and advertising; and when I delivered the deeds to Fred I received a lump sum, so much per acre, and after deducting out the costs, I think I divided with McKinley. Whatever that was, I don't recollect now.

Q. Now, in these exhibits, these C. A. Smith letters that I have called your attention to, one or two

(Testimony of S. A. D. Puter.)

of them where "Fred"—a person by the name of Fred is mentioned, to whom does that refer?

A. Mr. Kribs.

Q. What arrangement did you make about the payment of the fare of those parties to Roseburg at the two different trips that they made there?

Mr. UELAND.—Well, there is no evidence—you mean between McKinley and the witness? There is no evidence that he had any communication with any of them.

Mr. McCOURT.—I am referring to the arrangement that he made with the railroad company about the fares.

A. Well, there was one batch, I believe—the railroad company, where there were ten or more people traveling at one time, they would give you a rebate, or a reduced rate, I believe one and one-third fare.

Q. Was that the rate that you had in taking those parties [705—742] up there?

A. Yes. I made that rate to the railroad company for one or two bunches of them.

Q. Now, do you know Finlay Morrison?

A. Yes, sir.

Q. And you know D. W. Tarpley. What has been the business of Mr. Tarpley and Mr. McKinley since 1904? A. You say what?

Q. What has been the business of Mr. Tarpley and Mr. McKinley since 1904?

A. Well, of course, I can't tell everything they have been into.

Q. Well, have they been in the timber business

(Testimony of S. A. D. Puter.)

yet? A. Yes.

Q. And since that time you have still been in the timber business? A. Yes, sir.

Q. And are yet. Now, this case, Mr. Puter, you have written quite an extended chapter relative to this case in that book of yours called "Looters of the Public Domain," have you not?

A. Yes, sir.

Q. And at the time you wrote that, was the matter fresher in your mind than it is now?

A. Well, no. I didn't have the—I wasn't in position exactly to get dates and everything as well as I am now.

Q. What operation have you recently had?

A. I have had an abscess in my left ear, and it has been operated upon about seven times.

Q. Has that affected your memory in any regard? A. Well, no.

Q. What? [706—743]

A. It—only in hearing—the minute when I speak the bubbling, it is rather difficult for me, that is all. But I have had an opportunity to refresh my memory in the last year with a good deal of those transactions—the last two years.

Q. There is some correspondence in here. Have you been furnished with a copy of that correspondence that is put in the record here, between you and Mr. McKinley during the time these transactions were being conducted?

A. Yes, sir. I believe you handed it to me, yes.

Q. Now, I would like to get it a little more defi-

(Testimony of S. A. D. Puter.)

nite, Mr. Puter, about your talks with Mr. Smith when you first presented this matter to him in Minneapolis in February, 1900.

Mr. UELAND.—We object to the question because it contains a statement to which this witness did not testify.

Mr. McCOURT.—That was merely preliminary. I have not asked the question.

Mr. UELAND.—The question implies facts not stated by the witness as to the time.

Mr. McCOURT.—Oh.

Q. Well, February or March, whichever it was, 1900. Now, you just tell the Court your first meeting with Mr. Smith and the presentation to him of this proposition of this land up in Linn County.

A. I thought I answered it.

Q. Well, you didn't answer it as widely as I wanted you to. I want you to tell the Court all about what you and Smith said and what you did.

A. Well, right after the first batch of these entries was filed on, as I stated, I went East, and I don't know whether I had seen Smith first before I seen anybody else or not. It seems to me I had seen some parties at Duluth first, [707—744] as I had went straight through.

Q. We don't care whether you saw him first or last. Tell us what you and Smith said when you met each other and talked this matter over.

A. I seen Mr. Smith, and said that we had fell down on the Coos County lands; that I had another proposition that I thought was a good deal better—

(Testimony of S. A. D. Puter.)

more money, worth more; that I had eight or ten thousand acres I expected to get title to, that I could deliver to him for about \$7.00 an acre, and wanted to know if he wouldn't take it. And he questioned me where it was located, and how much timber was on it. I told him it was Linn and Lane County, and I thought I could guarantee 75,000 feet per acre. Well, he said he would like to take it. And he says, "You see Fred, and whatever arrangements you can make with him, you can bank on my carrying it out." That was the sum and substance of the conversation.

Q. Now, had you met Fred before that?

A. Oh, yes.

Q. You mean Fred Kribs? A. Yes.

Q. How long before that had you met Fred, and how well acquainted with him had you become?

A. Well, not very. That was when I drew up a contract with Mr. Bohn and Smith and myself, where I was to sell Smith 60 quarter sections in Coos County, and he gave me a letter of introduction to Fred Kribs, who was at that time in San Francisco, and I went direct there to see him.

Q. How long was that before the transaction relative to the Linn County lands?

A. Well, that I cannot say. It was in either November or December in 1899, or in January or February, 1900. [708—745]

Q. All right. And did you go West and see Kribs, or was Kribs in Minneapolis then?

A. Went direct to Frisco to meet him; talked

(Testimony of S. A. D. Puter.)

with him for three days on the matter.

Q. All right. Now, then, let us go back to this Linn County deal again. Now then, how long was it after you talked to Smith that you went out and saw Smith relative to lands in Linn County?

Mr. UELAND.—Counsel unintentionally, I think, confuses there. As I understand the witness, he had had no talk with Smith about the Linn County lands before the Coos County deal fell through.

Mr. McCOURT.—No, that is right. But he did go out to see Kribs immediately after he talked to Smith about the Linn County deal. A. No.

Mr. UELAND.—No, Coos County.

Mr. McCOURT.—He went again—went to see him again. I will just ask that question.

Q. After you had talked with Smith about the Linn County lands, as you have already stated—

A. Yes.

Q. How long was it after that till you saw Kribs in California?

A. Oh, probably 25 or 30 days. I had went to Michigan and all around for a while.

Q. Now then, where did you meet Kribs?

A. That I cannot say, whether it was in Frisco or in Sacramento or in Oakland. Kribs had been on the road, up and down—I looked him up and found him; I don't recollect where, but I had found him somewhere.

Q. You recall having a conversation with him about these [709—746] lands? A. Yes.

Q. Now, what did you say to Mr. Kribs?

(Testimony of S. A. D. Puter.)

A. I told Mr. Kribs that I had some eight or nine thousand acres up in Oregon, Linn County, that I expected to get title to, that I could deliver at a certain figure, and I would like to have him look into the matter; that I needed some money to furnish the entrymen to prove up on. He wanted to know how much it would take. I told him it would take \$600 on the quarter, cash down. And he said he would come up and look at it. So he came up, or he was already here—I don't know which; and he looked over the land.

Q. Just a little bit now. Did you tell him then what you would sell it to him for?

A. I told him that I procured titles to those lands—I expected to, for in the neighborhood of, I think it was \$6.00 or \$6.50 an acre. So he didn't say anything but he would look at them. So a little while afterwards he had looked at the lands, and he told me they were good—good timber and he says, "I will let you have the money on those lands."

Q. Then at that time when he talked to you that he would let you have the money on them, did you set the price at which he could secure the title to them?

A. Well, I wanted \$600 on the claim, but as I said, I didn't enter into any definite understanding that he was to take them, but that I could procure the title for those lands. He didn't say at the time that he would take them or not. But I conveyed that idea to him, and I think that he understood me well enough without going into the details. That is

(Testimony of S. A. D. Puter.)

my impression of it. [710—747]

Q. What was your reluctance about telling him that you would secure, or entering into a definite understanding with him?

A. Well, I was not exactly sufficiently acquainted, in fact, with him for to go into the details with a stranger, that I hadn't only met two or three times, in regard to how McKinley and I was procuring title. I had to feel him out, in a way, the best I could. And I thought by his actions that he agreed to put up this money with the expectations of getting the land at my price. But when we come to have the lawsuit with the Northern Pacific, he backed out. And I went after him again, and persuaded him to come in and help us out, which he did.

Q. Where was he when this trouble with the Northern Pacific was going on?

A. Well, he was either in California or Oregon—I can't say. I have heard that he was in Albany—heard of it today for the first time. I have forgotten where he was—didn't know.

Q. Do you recall the incident of the contest in Roseburg? A. Oh, yes.

Q. Well, do you recall Mr. Kribs being present there at the hearing, or about the hotel there, when it was going on?

A. Certainly he was there. The day we was putting in the proof. He went there—that is, a little while before I had requested him to have the money, that I thought there would not be any contest, that the proofs would be in and we would want to have

(Testimony of S. A. D. Puter.)

the money. So he was there, or he was there the next day or two afterwards, I think. I don't think he was there on the day of the contest,—maybe for about three days afterwards.

Q. How many days was it after proof was made until you turned over these deeds to Kribs—these Willd deeds? [711—748]

A. Oh, it was within the week—I think within the week.

Q. Did you receive any payment of money at the time you delivered the deeds to him?

A. Oh, yes. We settled up all except one thousand dollars that he retained.

Q. As to the claims that had already gone to proof?

A. Yes, some twenty odd claims.

Q. Do you remember the amount of money that Mr. Kribs paid you there at the time you delivered him the first batch of deeds and mortgages?

A. Well, he paid me at the rate of \$5.50 an acre for the number of acres that was put through—I think twenty odd entries—twenty-one or two or three—after deducting out the amount that he paid to the Land Office, which was probably \$411 or \$412 a quarter.

Q. Do you recall that you received a check from him for 7900 and some dollars?

A. Yes, it was 7,000 and some odd dollars.

Q. That time? A. Yes, sir.

Q. Well, now, what occurred as to the second batch of claims between you and Mr. Kribs?

A. Well, that my mind is—I have tried my best

(Testimony of S. A. D. Puter.)

to think of it. I know the proof was put in, and those deeds was procured exactly in the same way. I don't know how soon, or how it was, but I am pretty sure that he paid me for the others. I don't know exactly where it was; I have forgotten where it was—whether it was here in Portland, whether it was ten days or two weeks afterwards, or how. As soon as the proof was made on these other claims—I had money then—we had money out of the \$7,000 to conduct [712—749] that ourselves, so far as paying those entrymen, procuring the deeds; and they were handed over, and he paid the difference.

Q. How long was it after you had received this money from Kribs that you and McKinley effected a settlement?

A. Well, that I cannot tell. It might have been at that time. There was always an account between us. Sometimes Mac would owe me a couple of thousand dollars, and sometimes I would owe him.

Q. Now, did you deliver those mortgages to Kribs at the same time you delivered him the deeds?

A. Oh, no, they were delivered on the day of proof.

Q. They were delivered on the day of proof. Now, after you had made this proof, what were your relations with Kribs? How often did you see him in relation to the matter from time to time?

A. Well, I didn't have anything more to do with Mr. Kribs, only I might meet him once in a month or two months, until—well, even when the Govern-

(Testimony of S. A. D. Puter.)

ment was investigating the titles.

Q. Where did you go to sign your Stratford affidavit that you mentioned?

A. I think that was here at the Perkins Hotel; somewheres in town; I don't recollect where.

Q. Who was there besides Mr. Stratford himself?

A. Well, really I don't know that. I don't think there was anyone.

Q. Had you had a talk with Mr. Kribs about it before you went there to sign it?

A. Yes. Kribs, he stated that it would be necessary for us to make affidavits—McKinley, myself and all of the entrymen.

Q. Well, did Kribs state that, or did you and Kribs and [713—750] McKinley formulate that plan among yourselves?

A. Well, no, it was, it seems—it was Stratford that started that. He came out here, and it is customary for a Special Agent to get affidavits from the different entrymen. And he had spoken to Kribs, and Kribs to him about it; and Kribs come to me and wanted me to help him out in this matter—round up those people, that Stratford was here, and get the affidavits from them. So of course, we done what we could. McKinley attended to most of that, because I went away East. I don't think that I, in fact, spoke to anyone, that I can recollect now. I think myself and my—I don't think my wife made an affidavit, as far as that is concerned. She was not here.

Q. You made one for her? A. Yes, sir.

Q. You included her claim in your affidavit?

(Testimony of S. A. D. Puter.)

A. Yes, I concluded the 33 claims in mine. That is the one that was made.

Q. The money that was paid for your wife's claim, did you pay that or did Mr. Kribs advance that too?

A. No, the proof was put in, and who paid the money to the Land Office I don't know, but I presume it was Kribs. Because the way we done those, we didn't want to give the money to the entrymen; it didn't matter; anyone could go in and pay it to the Register and Receiver. And as Kribs has taken the mortgage on the claims, I presume that he gave a check on the bank there to the Land Office, probably for the twenty odd claims at one time. He may have done that. Or he may have paid each one separate—I don't know. I presume he would do that, because it was customary—I have done that myself. I have put in proof where I would come in sometimes two or three days afterwards, and [714—751] pay for the proof for three or four claims at a time.

Q. Well, now when, for instance, Charlie Barr made proof—do you remember Charlie making proof?

A. I just recollect the name. That is all.

Q. Well, we will catch one of these fellows that you know. For instance Mr. Green made proof. You know John L. Green, don't you?

A. Yes.

Q. For instance, when John made proof, now, did Kribs turn over \$600 to you? A. No.

Q. Did he turn \$600 over to Green?

A. No.

(Testimony of S. A. D. Puter.)

Q. Did he pay \$600 to anybody?

A. Well, it seems that a day or two before the proof, to the best of my recollection, the money was there for to pay for that purpose at the rate of \$600 an entry, or more, and as the proof was put in, there was a certain amount of money to go to the Land Office, that was to come from Kribs, and there was a certain amount to go to these entrymen. I wanted that, and I am pretty sure that Fred had given me a check for three or four thousand dollars, maybe two thousand dollars—I had some money of my own; and as soon as proof was put in, I paid those parties, some of them, right there, got their deeds—and others I paid three or four or five days afterwards. But when I made the settlement with Fred for the balance I went to him and said “I have got the deeds now to those 20 claims. Do you want to take them?” He says, “All right.” And that is when we figured up, he kept the book account, what he paid me, and what he paid the Land Office, and give me a check for the difference, which was seven odd thousand dollars. [715—752]

Q. Well, the \$600 didn't have anything to do with that calculation, did it?

A. I don't understand.

Q. When you made your dicker with Kribs, Kribs had put up so much money for proofs, hadn't he?

A. Yes.

Q. And he had given you a certain amount of money to pay entrymen at the rate of \$100 or \$75 apiece, hadn't he?

A. Well, he didn't know what I was paying—

(Testimony of S. A. D. Puter.)

never did know what I was paying the entrymen.

Q. Well, whatever you were paying them, he had given you so much money, hadn't he?

A. Yes, sir.

Q. It didn't represent \$600 a claim, or \$500 a claim, or any particular sum?

A. Yes, I am inclined to think that he gave me the difference between \$600 a claim and \$415 or \$420. That is the best of my recollection.

Q. At what time?

A. Just before the proof or about that time.

Q. About the time of proof? A. Yes.

Q. But that was to pay the entrymen with?

A. Well, yes, that was to pay—of course, I was out considerable; that was representing practically the \$600.

Q. Now, then, that would be 21 claims. Did he give you that for yours too? A. Yes.

Q. What?

A. Same thing for every one; no difference.

Q. The record shows you paid your own.

A. Oh, well, maybe I might have paid it in the Land Office. [716—753] I don't recollect whether I paid it or not; probably I did.

Q. Now then, when he paid you, two or three days afterwards—April 25th—you think he paid you the excess of \$600 a claim which the claims brought at the rate of \$5.50 an acre? A. Yes.

Q. Or was it \$5.25 an acre?

A. Well, I don't know now. It is either \$5.25 or \$5.50 that he paid.

Q. That would be about \$250 a claim?

(Testimony of S. A. D. Puter.)

A. Yes, something like that.

Q. \$280?

A. He paid me up in full, holding back one thousand dollars.

Q. Holding back one thousand dollars. Well now, that would be about between four thousand and five thousand dollars?

A. Well, let's see. The difference between, we will say \$5.50 an acre, that would be \$880 a quarter.

Q. Yes. That would be \$280 a quarter.

A. Now, 21 claims.

Q. Well, there were not 21. There were 19 of them. That would be \$5,320. Now, that would fall about \$2,000 short on that seven thousand, wouldn't it?

A. Well, he didn't probably, as I stated, that he may not have given me the full amount between \$411, that went to the Land Office, and \$600. He gave me a certain amount anyway, whatever it was. I had some money of my own, and whatever was necessary, I asked him to advance, and he did, and that must have been, with what money I had of my own on deposit at that time in the bank, and checked it out very shortly afterwards.

Q. Now, Mr. Puter, you know Andrew Christensen? [717—754] A. Yes, sir.

Q. You remember talking to him a good many times about this case? A. Yes, sir.

Q. Talking to me a good many times about this case? A. Yes.

Q. And you were very enthusiastic about the case, haven't you been?

(Testimony of S. A. D. Puter.)

A. I have been all the time.

Q. Very anxious to see the Government win?

A. Yes, sir.

Q. And do you recall that the statements that you made to me before this case was started were substantially in accordance with those printed in your book call "Looters of the Public Domain"?

A. Well, I saw a statement there today that I made before Mr. Rabb there, that I had not signed. Now, in substance that is correct, but I did not—there is certain things in there that I don't recollect.

Q. Well, but your book you remember writing that?

A. Yes, sir.

Q. Vouching for it?

A. Yes, sir.

Q. And you remember telling me just about what occurs in that book?

A. Yes.

Q. In relation to these cases. You remember on yesterday coming down on the train from Pocatello?

A. Yes, sir.

Q. That your enthusiasm was just as great?

A. Yes, sir.

Q. In talking to Mr. Christensen?

A. Yes, sir. [718—755]

Q. You remember meeting Finlay Morrison and Daniel Tarpley on the East side last night?

A. Yes, sir.

Q. You remember that since that time your enthusiasm has entirely died out?

A. Not at all.

Q. What?

A. Mr. Morrison met me on the east side for an important message from Johnny Logan, and told

(Testimony of S. A. D. Puter.)

me to go up to his house and see him, which I did.

Q. I show you a statement here, and ask you if that is a copy of the statement which you presented to the Secretary of the Interior of the United States in relation to these claims, about the time these suits were commenced, or a little afterward?

A. I suppose it is the same one I read upstairs today, isn't it?

Q. Yes.

A. Well, I notice I have not signed this, but I presume—I have not read it carefully over.

Q. You furnished Mr. Glavis with a copy of it, didn't you?

A. Well, if this is the statement, I furnished Mr. Glavis with one. Now, this is some time ago that I made this statement, and there is a good deal of it. I went over the matter as close as I could when I knew I was to be a witness here under oath, and I have endeavored to testify to the exact facts of the case right straight through; and I believe that, if I had a whole lot of correspondence, which it appears to me is all in evidence, I would not wonder but what it would corroborate me just about what I have stated. This in substance is right. There is one or two things in regard to dates, and one thing, that may [719—756] be a little off, because I didn't have the exact memoranda at that time.

Q. Well, you did make that statement?

A. Well, I don't know. I have not looked it over thoroughly. It seems to me it looks as if I had. I have not read it over carefully. I presume I did.

Q. Now, I will ask you if you did not make this

(Testimony of S. A. D. Puter.)

statement to me, and also write it to the Acting Secretary of the Interior, or to the Secretary of the Interior in about the month of January, 1909, and in that communication make this statement: "In the Spring of 1900 C. A. Smith, a multimillionaire lumberman of Minneapolis, Minnesota, F. A. Kribs, his Pacific Coast agent, and S. A. D. Puter of Portland, Oregon, entered into an agreement whereby the latter was to locate a group of entrymen on a large tract of timber in Linn County, Oregon, in the interest of Smith, who was to furnish all necessary funds, with the understanding that deeds to the various tracts thus acquired were to be made to whomsoever he might designate." A. Yes.

Q. You remember making that statement?

A. Yes.

Q. In your communication to the Secretary?

A. Yes, sir. Just what I stated here today.

Q. That is what you have stated here today, and intended to state to-day? A. I have.

Q. "Soon after the lands had been filed on, Smith, Kribs and Puter made personal inspection thereof, and upon this occasion Smith directed Puter relative to the method of transferring the titles."

A. Well, that now, since—I don't know whether, if I [720—757] said it in my statement—I believe it was Kribs said, when I asked him who this title should go to, John A. Willd. It is not Smith. I was mistaken when I made that statement, but I have corrected it by jogging my memory since that time.

Q. You think now that it was Kribs that directed

(Testimony of S. A. D. Puter.)

to whom the title should go?

A. Yes. I know it was not Smith—I am pretty sure of that.

Q. How is it as to that direction having been given at a time when you, Kribs and Smith looked at the lands?

A. Well, you see it appears that Smith visited the lands after the proof was made. I don't recollect that now—I don't know whether it was before or after—but I heard today, heard from you, that it was in May that Smith visited the lands with me; so if it was, it was after the title was conveyed.

Q. Well, did he ever visit them any more than the one time?

A. That is the only knowledge I have that he visited them.

Q. That is the only time you ever visited the lands with him?

A. That is the only time, in fact, I was ever on the lands up to a little while ago.

Q. All of these deeds had been made before May 20th, hadn't they? A. Certainly.

Q. So that he could not have given you any such direction at that time? A. No.

Q. It must have been Kribs, at some other time, who gave you that direction.

A. I believe it was Kribs, at the time that I was making the deeds; I asked him who would I have those—in case I got those entries, who would I have the deeds made to. [721—758]

Q. “Smith furnished the money with which to pay for the lands when final proofs were made, and

(Testimony of S. A. D. Puter.)

all the entrymen, in accordance with instructions from him, thereupon executed deeds in favor of John A. Willd, of Minneapolis, Minnesota, a stockholder in the C. A. Smith Lumber Company of that place, and likewise a relative of Smith's."

A. Well, to the best of my knowledge that is all right. The only thing that I am mistaken on there, as I said before, that it was not Smith.

Q. That told you?

A. That dictated who the deeds should go to.

Q. It was Kribs?

A. Yes. And the first paragraph there, where I stated that Smith, Kribs, myself and McKinley entered into this contract, that is all true, I spoke to Smith about conveying him some eight or nine thousand acres. I spoke to Kribs that I thought I could procure deeds to those lands. But it was definitely understood between McKinley and I that we was to get those lands on those conditions and that Smith was the man that was going to furnish the money, because I banked on him. And that is in accordance with that statement right through.

Q. Yes, but you say here that you entered into an agreement?

A. Well, what I meant by an agreement, it was a verbal understanding between McKinley and I that such was the case. But we didn't enter into an agreement only with Smith that he would advance the money, to see Mr. Kribs, and that he would take those lands. But he didn't know at that time the circumstances.

Q. You say in this statement here that "in the

(Testimony of S. A. D. Puter.)

Spring of 1900 C. A. Smith, a multi-millionaire lumberman of Minneapolis, Minnesota, F. A. Kribs, his Pacific Coast agent, [722—759] and S. A. D. Puter of Portland, Oregon, entered into an agreement whereby the latter"—that is you?

A. Yes.

Q. "Was to locate a group of entrymen."

A. Well, I just stated about the facts, as near as I can on that.

Q. Did they understand that you were going to locate a group of entrymen on any certain tract of land?

A. No. No one but McKinley and I understood that particular part of it.

Q. When was it Smith and Kribs first understood that particular part of it, now?

A. Well, as far as Smith is concerned, I don't know. It was a good deal—Kribs, I believe, was a good deal in the same boat that McKinley and I was, that is, to my opinion. We didn't tell McKinley and I—we didn't inform Kribs the entire situation, and I don't think that Kribs informed Smith, but led Smith to believe that everything was all right, because the conversation—

Mr. LIND.—One moment. I ask to have this stricken out as not responsive to the question; no opportunity to object to it. I mean the reference to Kribs and Kribs' understanding.

Mr. UELAND.—Kribs being in the same boat.

COURT.—Let him state the facts as near as he can.

Mr. McCOURT.—I didn't call for all that stuff.

(Testimony of S. A. D. Puter.)

Mr. LIND.—I ask, your Honor, that it be stricken out.

Mr. McCOURT.—I think it is a narrative of the transactions occurring while these things were going on.

COURT.—Let it stay in the record for what it is worth.

Q. What do you mean by Kribs being in the same boat as [723—760] McKinley and you?

A. Well, that question is stricken out. I tried to explain that, what I thought. A man don't—it wasn't necessary for me to go into all the little details when I says to Mr. Kribs I could procure title to those lands for a certain sum. He didn't say he would take them, but I assumed that he would by his actions.

Q. And you went on and acted accordingly?

A. I acted accordingly.

Q. And he did too?

A. When I procured the deeds I come to him with them, and he paid me without any conversation about it.

Q. I see. Now, then, as to Mr. Smith I will ask you if you did not tell me, in the presence of Mr. Neuhausen—you know Tom Neuhausen?

A. Yes, sir.

Q. About the 15th of May, 1908, conversing about this very case, and the commencement of it, in my office, upstairs here in this building, that you met Mr. Smith in relation to this transaction in the early part of January, 1900, while coming through Minneapolis, told him of the tract of land that could be

(Testimony of S. A. D. Puter.)

located out here by putting persons on it from whom the title might be secured; that he suggested sending out a couple of carloads of Swedes to enter the lands; you replied and demonstrated to him that it would take two trips out here for such entrymen to make locations, and that it would cost at least \$200, and that you could get entrymen out here, living in the country, in the vicinity of the land, for not to exceed \$100 apiece, and gave Smith assurance that you could do that; and he says "Very well, go ahead and do it that way"; and that [724—761] that was the basis of your understanding with Mr. Smith as to these lands.

A. No, not these lands, sir. I had such a conversation with Mr. Smith.

Q. Before you entered these lands?

A. I think it was subsequent.

Q. Subsequent. How long afterwards?

A. Well, I think that was about, a little while after he got title to those lands. A conversation come up that he had a lot of men, Swedes, that would take up land, and what is the reason they could not be located. I told him it was expensive, and that you could get it under this Scrip Act cheaper, and you could get men out there. I didn't refer to any particular tract of land. It was not in reference to this land at all.

Q. You told me it was when you talked to me, didn't you? A. I don't think I did.

Q. What? A. No, I don't think so.

Q. You were not talking to me about any other lands at the time, were you?

(Testimony of S. A. D. Puter.)

A. I don't think I mentioned it was this particular tract of land.

Q. Weren't you urging me to commence this very suit? A. Yes, certainly.

Q. That was what you were talking to me about, wasn't it?

A. Yes. But when I made that statement, I didn't make no such statement as that to you.

Q. About the Swedes?

A. I guess I told you that about that. I think I told you the story about that, but I didn't state what lands it was. [725—762]

Q. And you didn't state that you saw Smith in Minneapolis? A. What?

Q. You didn't state that you saw Smith in Minneapolis in January, 1900, before you made this entry at all?

A. If I said it was in January that I had the conversation in regard to the Swedes, I was mistaken. It was after that time.

Q. You state in your book here, don't you, that it was in January, 1900, that you made the arrangement with Smith?

A. I state now that, in substance, that story is right; but since I didn't have the data in regard to the exact time, and I had to do a good deal of guessing at it, and I have learned since that it was sometime afterwards that we had that conversation.

Q. It was later then?

A. Yes. But it was not in relation to any land in particular that he suggested about those people taking up the land. I told him it would cost two

(Testimony of S. A. D. Puter.)

trips out here; that in regard to getting a title to land, it would be an expensive way, and they could be got cheaper under the Timber Act, or by entry-men here in Oregon.

Q. You did, however, state to the Secretary of the Interior, as well as to me, that you had your conversation with Smith in relation to these lands prior to the time that they had been filed upon at all?

A. I talked to Mr. Roosevelt and Mr. Woodruff.

Q. Yes. You told them that too, didn't you?

A. Yes, when I filed the statement there that time.

Q. That statement that I have been reading to you was filed with the President, too, wasn't it—submitted to him?

A. Well, if that is the exact statement, it was. I have not looked closely into it. I haven't read it over. [726—763]

Q. I can assure you it is the exact statement.

A. I presume that it is, though.

Q. Yes, you bet you. The purpose of this representation was to secure additional assistance for me in conducting the cases?

A. Yes. I know I made that pretty strong.

Mr. McCOURT.—I think that is all for the present, if the Court please, till I have an opportunity to examine these letters I have.

Whereupon proceedings herein were adjourned until May 4, 1910, at nine thirty A. M. [727—764]

S. A. D. PUTER resumes the stand.

Direct Examination (Continued).

Mr. McCOURT.—Out of the letters which coun-

(Testimony of S. A. D. Puter.)

sel handed me yesterday while S. A. D. Puter was on the stand, I have three or four that appear to relate to this case and I would like to offer them in evidence. I would also like to have the letters of Mr. Smith which were replies to these letters, or to which these letters were replies.

I wish to read into the record a telegram: "Washington, D. C., January 18, 1901. C. A. Smith, Care C. A. Smith Lumber Company, Minneapolis. If there was any way of knowing that sworn statements and Stratford report was sent I would stay here. S. A. D. Puter."

Mr. McCOURT.—A letter:

"The Raleigh, Washington, D. C.
January 18, 1901.

Mr. G. A. Smith,
Minneapolis, Minnesota.

Dear Sir:

Your two telegrams of today and letter of the 15th instant received. Evidently Fred has heard either from the Land Office or Mr. Stratford. The letter I received from Dr. Loomis stated that Stratford report would be all right. He stated he could not see why it should not be so, as there was no fraud that he could see at the time proof was put in, before or after. At any rate I don't trust those Special Agents that I do not know. They generally order everything for cancellation and very seldom succeed in cancelling anything, only to putting a fellow to costs. At any rate I want to get those patents as soon as possible, for the N. P. people will do their best to hang them up. At the present time

(Testimony of S. A. D. Puter.)

no one can do any [728—766] more here than I can. Those fellows who have charge of those cases in the Land Department here, have been as obliging and accommodating to me as they could; have given me all the information they possibly can. They have written Stratford to forward his report immediately to the Land Office also to send on those sworn statements. Without those they cannot do anything. I hope Fred will attend to that, as the Department has written now four times to the Land Office for them. If I thought those documents and the agents' report was on the way, I would stay right here until I got the patent, for as soon as the way is clear I could get all those patents inside of twenty-four hours. I will wire Fred this evening and see what information he can give me."

Mr. McCOURT.—The rest of the letter does not bear on this, but I suppose I might as well read it all in.

"Lawrence must have gotten my letter about the 16th or 17th instant, explaining everything regarding those last claims. I wired him the day I wrote him at Minneapolis. I presume that some of those fellows were about to sell to someone else and that is why he wired you. Some of them think nothing of giving an option one day and the next day selling to someone else.

"It is strange about those three letters. I had received a telegram from my wife just before I left Minneapolis stating that she had forwarded an important letter to me there. Inclosed is the Postmaster's answer. The Post Office there cannot ac-

(Testimony of S. A. D. Puter.)

count for them. Carrier had the letters Tuesday, but as I was out, he took them away with him. That is what the clerk tells me in the hotel. The carrier now does hardly recollect about them, only that he knew he had those letters. I wish you would [729—767] call the Post Office up by 'phone and ask them if they have been returned. If so, to forward them here.

Very truly, S. A. D. PUTER."

Mr. UELAND.—To save time we will admit in that connection that the portion of the letter following the reference to Lawrence refers to Mr. Puter's brother at Eureka, and relates to some land matters in Humboldt County, California.

Mr. McCOURT.—Yes, lands in Humboldt County, California, which Mr. Puter had contracted to sell to Mr. Smith at that time.

Q. Mr. Puter, the party mentioned as "Fred" in this letter, to whom did that refer?

A. Mr. Kribs.

Mr. McCOURT.—The next one:

"Congressional Limited, Pennsylvania R. R.
Apr. 25th, 1901.

Mr. C. A. Smith,
Minneapolis, Minn.

Dear Sir:

The agent Stratford mad some mistake in his report. He was notified April 16 to make the corrections. Mr. Herman tells me that Stratford's mistake was a matter of small consideration and that as soon as they hear from him they would issue patent. I will have to go to Manistee, Michigan,

(Testimony of S. A. D. Puter.)

before I go home. I will bring receipt back with me.

Very truly,

S. A. D. PUTER." [730—768]

Mr. McCOURT.—Then one from—

“Lebanon, Oregon, August 17, 1901.

Mr. C. A. Smith,

Minneapolis, Minn.

Dear Sir:

Your letter of the 12 at hand, was forwarded from Portland here. In regard to the Rock Creek deal I don't understand what you mean. What has that to do with the Redwood Creek deal? Of course, I know you must be a little disappointed in not getting patents to those Rock Creek lands. Nevertheless I have done everything I can and it is only a matter of time when those patents will issue. I haven't the least doubt about that. If we had kept away from those Special Agents in the first place the patents would have been issued now. They are the ones that are holding them up. However, now it may take from one to two years before those patents are issued in that case *shurly* you do not think I could wait until then for a settlement in the Red Wood Creek deal. As I wrote you before I have close to \$6000 dollars of my own money in the Red Wood Cr. deal. I now owe Mr. Ed Bond \$5.00 per day since Davis went to work also I owe the Eureka Bank and I have to settle those bills, also Mr. Watkins wants what money is due him. I see by Mr. Davis report that unless we can settle regardless of the contract I would have to prepare to take those lands back and in that case I would want a little

(Testimony of S. A. D. Puter.)

time. I want a settlement some way in those lands. I want to know where I am at. It is verry easy to settle with me in any transactions. I am going back to the Deschutes River today and expect to be back in Portland in 10 or 12 days as Mr. Kribs wants me there on some bus. in regard to the Rock Creek lands. Mr. Davis tells me that Coffin offered his claim to him for \$2500 and at the same time offered it to you for \$2300. I would like to know if that is [731—769] so. I expected to have to pay any-way \$2500 for those claims, and I thought they never could be got for that. I would like to have you keep me posted in what you hear about those Prairie Creek claims. I would not want to go east now unless I could come to a settlement with you. I have not the time, neither the money to spare.

Very truly, S. A. D. PUTER."

Q. What lands are referred to as the Rock Creek lands?

A. That is the 33 townships in 14-2, 3 and 4.

Q. The lands involved in this case?

A. Yes, sir.

Mr. UELAND.—And the Prairie Creek refers to Humboldt County, does it not?

A. The Prairie Creek land is redwood lands in Humboldt County.

Q. Also the Redwood Creek lands are—

A. Humboldt County lands.

Mr. McCOURT.—The letter I am now about to read is in answer to the letter of C. A. Smith of July 26th relative to the Northern Pacific contest.

(Testimony of S. A. D. Puter.)

“Portland, Oregon, July 31, 1900.

Mr. C. A. Smith,

Minneapolis, Minn.

Dear Sir:

Yours of the 26th inst. at hand and contents noted. Regarding those 24 $\frac{1}{4}$ sec. that I gave up to the N. P. Co., just leave that to me. I will get those claims when the right time comes to act. I have been in communication with the U. S. Land Comm. in regard to the N. P. Co. receiving patents to selections of those Oregon lands. He informs me that they will receive no patent to any of those lands during the year 1900.

As soon as I get the patents to your lands which I expect to get now within 60 days this is when I will open up negotiations with the N. P. Co.

The N. P. Co. has no land on Rock Creek except the 24 $\frac{1}{4}$ sec that I let them have. As soon as I have, I will see [732—770] some parties who own sec. 34, 35 and 36-14-2 and try and get them for you as they are as good as any land in the tract. Mr. K. wrote me on the 23rd instant stating that he had sent Birt Davis and Douglas’—

Q. Is that Douglas? A. Yes, Douglas.

Mr. McCOURT.—(Continuing.) —“on a cruise and that they would start from Coos Bay down the coast to Prairie Creek about August 7th. I expect to start myself for Grants Pass this eve and will probably meet them at Crescent City. 98 in the shade here yesterday.

Very truly,

S. A. D. PUTER.”

(Testimony of S. A. D. Puter.)

Mr. McCOURT.—Now, have you any of those handy?

(Mr. Ueland produces letters.)

Mr. McCOURT.—This letter is not in reply to any of those, but I wish to read it into the record just the same—June 25, 1900. I suppose this is Minneapolis. The copy does not show.

Mr. LIND.—I presume so, yes.

“June 25/00.

Mr. S. A. D. Puter,
Portland, Oregon.

Dear Sir:

I am very much surprised to receive advice from Mr. Kribs that only about 6200 acres of the lands covered by the contract could be deeded at this time. Have just wired you asking for explanation. In as much as you contracted to deliver this land before the 1st. of July, and in as much as you assured us at different times before my return from the Coast, that the papers were all ready for all of the lands for immediate delivery, that the same would all be delivered any day that Mr. Kribs might come to Eureka and pay the money [733—771] in accordance with the contract, I am certainly very much surprised at the receipt of advice of the present conditions; especially in as much as Mr. Kribs was kept at Eureka for a number of days when the understanding was as above, that everything was all ready and could be closed up in full in a few hours.

I am not as yet in position to say anything regarding the other lands and will not be for a couple of weeks or such a matter.

(Testimony of S. A. D. Puter.)

I wish to thank you and your estimable family for the many kindnesses shown me during my recent visit. I shall never forget the pleasant trip we had together, and wish you would kindly remember me to your estimable wife, and extend to her for me, my sincere thanks for her many kindnesses during this trip. By the way, upon my return I found that the Miss. River had gone back on us. We are having the worst drought in this section that we have ever had as long as anyone remembers. Having had practically no snow last winter and no rains this Spring, the creeks and rivers are drying up so that but very few logs have been brought out into the Miss. River, and after being so brought out the water is so low even in the Miss. River that the driving of the logs is an impossibility, and in consequence the saw-mills have been idle for a couple of weeks, and without very heavy rains very soon the lumber cut along the river, both at this point and below, will be very materially reduced.

It is reported that twenty-eight saw mills in the White Pine region are now idle, and have been for sometime.

On account of this drought the crops of all kinds will be a failure in Minnesota, and North Dakota, and a large portion of South Dakota, as I understand it. This condition of things naturally does not tend to make us happy. With many regards,

Yours truly,

C. A. SMITH LUMBER CO.

C. A. SMITH."

Mr. LIND.—That doesn't relate to the matter in

(Testimony of S. A. D. Puter.)

issue. That relates wholly to the redwood lands.

Mr. McCOURT.—Yes, I understand. The purpose I wanted to read the first part of it was to show the relationship between Mr. Kribs and Mr. Smith and also the close relations between Mr. Puter and Mr. Smith. That is the only purpose. I concede it refers to Humboldt County lands.

The next is a letter—

“January 15, 1901.

Mr. S. A. D. Puter,

% National Hotel,

Washington, D. C. [734—772]

Dear Sir:—

I am in receipt of yours from Milwaukee, and also your telegram from Washington, I have also wired Mr. Kribs regarding the matter, and hope that he will take immediate action. Meanwhile I hope to receive from you full information. Anything under heaven that can be done in order to pull these patents out must be done, and I should think you are in better position than we are to secure this speedy action.

I received a telegram from your brother Lawrence, to-day asking for the description of this last deal, by wire. He has been trying to reach you, but has failed. Perhaps you had better wire him where he can reach you. I telegraphed him the description (six or seven dollars' worth) in order to hurry the matter.

Yours truly,

C. A. SMITH LUMBER CO.

C. A. SMITH.”

(Testimony of S. A. D. Puter.)

Mr. McCOURT.—I will read the letter of Mr. Puter to Mr. Rogers and the answer:

“Portland, Oregon, June 11, 1892.

Mr. McCOURT.—It is dated 1892, but should be 1902.

“Mr. A. P. Rogers,
Minneapolis, Minn.

Dear Sir:

I wired Mr. Smith the morning of the 9th wanting to know if he would be at home Thursday. You answered that he was leaving there Wednesday for Europe. I wired him again that afternoon wanting to know if he couldn't settle with me before he went to Europe. I got no answer to that message. He must have received it at about 5:30 [735—773] P. M. on the 9th. Mr. Smith owes me \$10,467.85 dollars. This money is not commission on the deal, but it is my own money which has been tied up waiting the perfection of the Oregon land titles and also the Humboldt Co. lands. The Oregon lands are all patented and the Humboldt Co. lands are all fixed up, so far as the title is concerned, except about \$30 or \$40 dollars back taxes. Now I have been out the use of that money for a long time and I want to use it at the present time very bad. Has Mr. Smith said anything to you regarding this money, or can you settle with me. He knew while he was in California this last time that my contract was completed and that I ought to get my money. Anything that you can do for me will

(Testimony of S. A. D. Puter.)

be kindly appreciated.

Very truly,

S. A. D. PUTER.”

Q. Who was Mr. Rogers?

A. Well, I believe he is either the Vice-president or the Secretary of the C. A. Smith Company at that time.

Q. The C. A. Smith Lumber Company in Minneapolis? A. Yes.

Mr. McCOURT.—The answer is:

“June 18, 1902.

Mr. S. A. D. Puter,

Box 809, Portland, Oregon.

Dear Sir:—

Your favor of the 11th received and noted. I presume the reason your telegram was not answered was because Mr. Smith was very busy and probably forgot it, or delegated it to some one else, or failed to answer it at least. [736—774]

With reference to your contract, as I understand it this matter is still unsettled. I will write to Mr. Kribs and ask him for information regarding it and also our attorneys. I have paid no attention to this matter, except in a general way, and it may be necessary for me to investigate the matter before I can say anything definitely either way. I will, however, write to Mr. Kribs and see what I can learn.

Yours very truly,

C. A. SMITH LUMBER COMPANY,

A. R. ROGERS.”

Mr. McCOURT.—Letter—

(Testimony of S. A. D. Puter.)

“August 5, 1901.

Mr. S. A. D. Puter,
Portland, Oregon.

Dear Sir:—

I am in receipt of yours of July 26th, and as stated before, both by wire and letter, I do not feel that I can make any further advances or payments until after all of our deals are finally closed up and adjusted in full, in accordance with our contracts, agreements and understandings.

If I felt that I was in position to assist you in this matter, or in any other matter, it would certainly give me pleasure to do so.

Yes, I understand Mr. Davis expects to be through with his work along about the 10th of August. I shall, however, not be able to go out to the Coast until sometime after his return.

Inasmuch as you have failed to give me your post-office address in this last letter, and in the several last letters, but have advised that you were kiting around the [737—775] country, not expecting to stay in any particular place sufficiently long for a letter to reach you, I am sending this answer to your home, enclosing the stock certificate which I received with yours of the 26th, and registering the letter, hoping that it will reach you safely.

Yours truly,

C. A. SMITH.

Enclosure.

Registered letter.”

Mr. McCOURT.—Letter—

(Testimony of S. A. D. Puter.)

“August 12, 1901.

Mr. S. A. D. Puter,
Portland, Ore.

Dear Sir:—

Answering yours of the 6th inst. from San Francisco just at hand, have nothing further to add except to verify the telegram sent you on the 7th and 8th. Neither you nor we had the remotest idea a year ago that there would be any trouble regarding the Rock Creek lands. Everything is being done, as I understand it, that can be done in order to facilitate the ultimate results of that matter, but under the circumstances I feel that we should not be called upon for the payment of any more money, or have a final settlement, until such a result is reached. I understand that you may be somewhat disappointed but I think you must realize that I am also disappointed. I fail to see how any benefits could accrue to you in coming east under the circumstances at the present time.

Yours truly,
C. A. SMITH LUMBER CO.,
C. A. SMITH.”

Mr. McCOURT.—Letter—

“Aug. 29/01.

Mr. S. A. D. Puter,
Portland, Ore. [738—776]

Dear Sir:—

Referring to yours of the 17th. Mr. Davis returned some days ago, and on account of being, and having been confined to the house since before his return,

(Testimony of S. A. D. Puter.)

I have been unable to examine his reports in detail. When I have done so and can send you data will be pleased to do so.

As to your coming East. You will have to be your own judge. As stated numerous times, I feel that a final settlement should not be expected under the circumstances, and can hardly be made until all of our deals can be closed up and cleaned up at one time.

After full and mature consideration on your part I believe you can hardly expect any such final settlement until such time as stated above, at least I am satisfied if you could put yourself in my position, looking at it entirely from my standpoint, that you would not expect it.

Yours truly,
C. A. SMITH LUMBER CO.,
C. A. SMITH."

Mr. McCOURT.—Letter—

“Jan. 10/02.

Mr. S. A. D. Puter,

Portland, Ore. General Delivery.

Dear Sir:—

Referring to yours of the 4th, Mr. Kribs expects to leave here on or about the 15th, for Portland, when he would like to confer with you regarding the matters about which you write.

With the compliments of the season and many regards,

Yours truly,
C. A. SMITH LUMBER CO.,
C. A. SMITH."

(Testimony of S. A. D. Puter.)

Mr. McCOURT.—For the purpose of making sure that the record shows it, I wish to fully understand what is the fact as to the correspondence between Smith and Kribs between April, 1900, and say, the 1st of September, 1902, as to whether there is any such correspondence or not.

Mr. UELAND.—Well, I have some memoranda at the hotel that I will get. I said the other day that I thought it related entirely to the lands covered by suit 3318. Some of this memoranda may refer to this matter.

Mr. LIND.—It is a memorandum—a word or two in checking—could not be called letters.

Mr. McCOURT.—There must have been letters exchanged between the parties covering these matters. If there were I would like to see them.

Mr. UELAND.—We haven't any.

Mr. McCOURT.—Do you know whether or not they are in existence or what became of them?

Mr. LIND.—We have not succeeded in getting anything. We made the same inquiry ourselves.

Mr. McCOURT.—From Mr. C. A. Smith and C. A. Smith Lumber Company?

Mr. LIND.—From Kribs and C. A. Smith. At the Minneapolis office we asked for all of the correspondence in these suits and got this bundle.

Mr. McCOURT.—(To Mr. Tanner.) I understand that Mr. Kribs hasn't his correspondence prior to December, 1902, which you gave me the other day.

Mr. TANNER.—No.

Q. Now, during this period between April, 1900,

(Testimony of S. A. D. Puter.)

Mr. Puter, and August, 1902, how frequently do you recall that Mr. Smith was here in Portland? [740—778]

A. Well, I couldn't say exactly. I met him at least three or four times.

Q. Here in Portland?

A. Well, at Portland and Roseburg—San Francisco.

Q. He usually made his headquarters where Mr. Kribs was, did he, while in Oregon?

A. Well, he always stayed at the Portland Hotel at that time.

Q. When he was here at Portland?

A. Yes.

Q. I notice, Mr. Puter, in the—what is called the Stratford affidavit here, that you made an affidavit which you testified to yesterday. I notice the name of J. P. Hanlan being mentioned, John Hanlan, as the party who negotiated the purchase of the lands for Mr. Willd. Who is this man? Who was this man Hanlan?

A. Really I don't know.

Q. Did you ever know of such a man?

A. No.

Q. Was there any such man had anything to do with the transaction at all?

A. Not that I know of.

Q. You would have known it if there had been?

A. Well, up to the time that I made transfer I would.

Q. Yes? A. Certainly.

(Testimony of S. A. D. Puter.)

Q. And do you know whose—who selected the name Hanlan in that affidavit there. A. No.

Q. And used it? A. No.

Mr. McCOURT.—I want those checks that you spoke to me about, Mr. Tanner—those you gave me the amounts and dates of the other day. Have you them? [741—779]

(Mr. Tanner produces checks.)

Mr. McCOURT.—I offer in evidence check dated May 16, 1900, in favor of Henry Booth, Receiver, for \$5962.60 drawn by Mr. Kribs upon the First National Bank of Roseburg, this check constituting the payment on final proofs made upon that date in this case.

Mr. LIND.—No objection.

Marked “U. S. Exhibit 191.”

Mr. LIND.—As to what those checks are for I have no—

Mr. McCOURT.—No, I can't testify on this, so I am not going to try.

Mr. LIND.—What I meant to say was, I could not assent to any statement as to what for.

Mr. McCOURT.—I am not prepared to make any statement in regard to this; I don't know.

Q. I hand you, Mr. Puter, check dated April 25, 1900, in your favor for \$7,349.25, signed “Fred A. Kribs” endorsed by you, and ask you whether or not that was a payment made to you in relation to the lands in this case?

A. Yes, that was the payment—that was the—that check was given at the time I handed Mr. Kribs

(Testimony of S. A. D. Puter.)

the deeds, I believe, to the 21 entries. That amount was practically my commission and money that I had paid out.

Mr. McCOURT.—I offer the check in evidence.

Marked “U. S. Exhibit 192.”

Q. I hand you another check dated May 8, 1900, payable to you on the First National Bank of Roseburg, for \$3,500.00, drawn by Mr. Kribs, endorsed by you, and ask you if you have any recollection as to what that payment related?

A. Well, I—to the best of my recollection, that check must be for the balance due on the other 14 entries that [742—780] I had secured several days later.

Q. Well, the proof had not been made on them at that time Mr. Puter? The proof wasn't made until May 16th.

A. The proof wasn't made until May 16th?

Mr. UELAND.—Wasn't the proof made April 18th?

Mr. McCOURT.—April 18th on the first batch and May 16th on the next.

A. Well, really now I don't recall. As I stated yesterday those 14 claims that was turned over afterwards, it has gone out of my memory, right when I procured the deeds for them.

Mr. McCOURT.—Well, we will offer the check in connection with the Kribs account.

Marked “U. S. Exhibit 193.”

Q. I now show you check in your favor for \$1,000 on the same bank drawn by Mr. Kribs on May 16th,

(Testimony of S. A. D. Puter.)

the date at which the second lot of proofs were made?

A. Well, really that is the same as the other. It—I am pretty sure that it is pertaining to those lands. I can't state exactly the exact conditions, but that was about the date, I know, so that for—when did you say the proof was put into these 14?

Q. On that date.

A. On that date. Well, I don't know. It would take—it would be more than that. I don't know how it came to be only a thousand dollars.

Q. In connection with that I hand you check of May 22nd, drawn on the same bank in your favor, for \$9,000, Mr. Kribs, drawer, endorsed by you. Was that in connection with these lands or some other lands?

A. Well, I stated yesterday that I was—I thought Mr. Smith had paid me about that amount of money on the [743—781] Humboldt County lands. Now it might have been Mr. Kribs.

Q. Gave you the \$9,000 on the Humboldt lands?

A. Yes, it seems to me there was no such figure as that coming to me on the Oregon land, so this must be in reference to the Humboldt County lands. I am not—

Q. That was at the date Mr. Smith was here in Oregon? At that date? A. *Unhuh.*

Q. You recall that? A. No, I don't.

Mr. McCOURT.—It will conceded he was here May 22d, 1900.

Mr. LIND.—Yes.

Mr. McCOURT.—I offer both checks for what

(Testimony of S. A. D. Puter.)

they are worth.

Check of May 16, 1900, marked "U. S. Exhibit 194."

Check of May 22, 1900, marked "U. S. Exhibit 195."

Cross-examination.

(Questions by Mr. LIND.)

In the letters just read into the record, it would appear that a difference of opinion arose between you and C. A. Smith, in the progress of your correspondence with reference to your business matters. Is that true?

A. Well, in what light.

Q. Well, in regard to paying you?

A. Oh, yes.

Q. When did you first begin to have a difference of opinion with Mr. Smith in regard to payment for your redwood and [744—782] other lands that you had sold him or contracted to sell him, if you recall?

A. Well, at the time that I got through with the redwood deal; that is, turned over the last claim, I fell short two or three thousand acres on the original contract, and I wanted to make a settlement with Mr. Smith and he was willing to settle providing I complied with my contract, which was an utter impossibility for me to do. So in order to get relieved from that contract, we modified it. In order for me to get what money I had out—already paid out. And in modifying that contract, I forfeited all commissions that I was to receive in the Humboldt County deal and all I was to get back was actual cost to me of those lands, and that was due and payable when

(Testimony of S. A. D. Puter.)

the title to the Humboldt County lands was perfected, and other lands in Oregon. Now, in drawing up that contract, I overlooked that line "other lands in Oregon." Did not think it had anything to do with the Oregon deal.

Q. Well, it didn't, as a matter of fact?

A. It did not, but Mr. Smith—

Q. You regarded that as sharp practice on his part?

A. Yes, it was, too.

Q. Sticking that in? A. Yes, sir.

Q. Well, that made you quite angry, didn't it?

A. Well, I should say it would.

Q. Now, you spoke about commissions on the Humboldt land. It wasn't commissions, was it?

A. Well, it was—I call it commissions. I sold him those lands—was to sell him those lands at \$9.50—at \$9.50 per acre.

Q. You sold at a contract price? [745—783]

A. Yes.

Q. To him, and bought as cheaply as you could?

A. Yes, sir.

Q. He was not paying you any percentage or anything?

A. Well, between the cost price and the price Smith was to pay to me was in the neighborhood of twenty-seven or twenty-eight thousand dollars coming to me on the property.

Q. And you felt that, in a measure, he didn't concede you all of that profit? A. Yes, sir.

Q. You became, as a matter of fact, very hostile to Mr. Smith, did you not?

(Testimony of S. A. D. Puter.)

A. Well, I should say I did on that transaction.

Q. And threatened him a good deal?

A. What is that?

Q. And threatenend him in various ways that you would cause trouble?

A. Well, I did not. I endeavored every way in the world to get that money from him.

Q. Well, now, as a matter of fact, when you wrote—it appeared in evidence yesterday that you figured something as an author. I believe you published a volume entitled “Looters of the Public Domain”—some such name—“Looters of the Public Domain.” You published that volume, did you not?

A. Yes, sir.

Q. In what year?

A. It came out in May, 1908.

Q. At the time you prepared that book you were very hostile against Mr. Smith?

A. I should say I was. I had good reason for it. The book shows it. [746—784]

Q. Well, we are not discussing your reasons now, Mr. Puter. You thought you had and still think you have, probably. I will concede that. A. Yes.

Q. Now, as a matter of fact, didn't you make Mr. C. A. Smith one of the heroes of that volume that you published? Who is the real hero of that volume? A. What do you mean by the hero?

Q. Oh, the most prominent—yourself or Mr. C. A. Smith, from your standpoint?

A. Well, I endeavored to transfer my title from “King of the Land Fraud Ring” to—

Q. To C. A. Smith?

(Testimony of S. A. D. Puter.)

A. To C. A. Smith, King of the Land Fraud Thieves.

Q. That is the spirit in which you wrote it?

A. Yes, sir.

Q. That is the spirit in which you communicated with the Government in regard to his affairs, wasn't it?

A. What is that?

Q. That is the spirit in which you communicated with the President and the Interior Department—

A. Oh, no.

Q. —in regard to these matters, wasn't it?

A. No, not exactly.

Q. Do you think that you were fair in any statement with reference to C. A. Smith that you made to the President or to the Interior Department?

A. Oh, yes, I was. I may have made it a little stronger as any man would in order to get action, but the sum and substance of the story is just as I stated.

Q. Well, what is it? [747—785]

A. Sir?

Q. Wasn't that written rather as a financial investment than as a historical record?

A. Oh, no, not at all.

Q. What was your real object in writing that book? Do you mean to say that you intended it as a historical record for the State of Oregon?

A. Well, I don't know how a man gets an idea into his head. Someone puts it there and he starts off.

Q. Didn't you plan to make money out of that? Didn't you hope to?

(Testimony of S. A. D. Puter.)

A. Well, I didn't know about that. It was something new to me. I never was in that business before and had no idea.

Q. Didn't you aim to make it as racy—

A. What is that?

Q. Didn't you aim to make it as racy and as sensational as possible?

A. Well, did you ever see a story book written up but what wasn't a little that way?

Q. Exactly. I confess I never did. And really, a goodly share of that is romance, rather—

A. What is that?

Q. A goodly share of that is romance rather than history? A. Oh, no, I don't know; very little.

Q. Now, you succeeded in that, in getting the Department of Justice of the Government to finally collect this claim for you by threatening indictment against Smith?

A. Oh, no, I got it myself without any help from the Department of Justice or anybody.

Q. Mr. Puter, didn't I understand your testimony of yesterday to indicate that it was communicated to Mr. Kribs and [748—786] Smith that you would go before the grand jury and procure an indictment against him unless this claim was paid?

A. At the time Kribs was making affidavits for Mr. Heney, I went to him and says, "Here, Mr. Kribs"—I think I showed him an article that I was going to have published in the "Oregonian" telling where Mr. Smith had been indicted in Minnesota, and I was going before the grand jury, and I was going to induce it to indict him on these lands unless

(Testimony of S. A. D. Puter.)

he paid this money that was due me, and I would give him four days to do it. Now, I didn't consult the Department of Justice, Mr. Heney, Mr. Burns or anyone, only Mr. Kribs.

Q. Didn't Mr. Burns know what you were doing at that time? Weren't you in his confidence—his assistant?

A. No, Burns—I held that thing off for four or five days. Both he and Heney was after me every day wondering what it was held up for. Didn't have the least idea; never heard of it so far as I know.

Q. Didn't they know or suspect that you were forcing a private settlement or trying to?

A. Not to my knowledge.

Q. Are you certain of that?

A. Why, I am; of course I am.

Q. Are you as certain of it now as you were when you wrote your book?

A. Why, certainly.

Q. Now, as a matter of fact, you had Mr. Burns call Mr. Kribs before him a number of times, did you not?

A. Had what?

Q. Had Mr. Burns call Mr. Kribs on the carpet a number of times?

A. Yes, sir. [749—787]

Q. In regard to these matters?

A. Yes, sir.

Q. Wasn't the reason for that on your part that you hoped by that means to enforce payment of your claim?

A. Well, not on the start it wasn't; until the thing was—that came to me all at once, just about the last—just four days before the payment was made.

Q. Was it kind of an inspiration?

(Testimony of S. A. D. Puter.)

A. It never occurred to me when I started in on that, however, that I was to get any money out of it. That was to come to me.

Q. Didn't know you could use Uncle Sam to help you collect the bill?

A. No, sir, never thought of that.

Q. Well, you did finally, though?

A. Yes, it was a pretty good opportunity. I saw a good chance there and I thought I would use it.

Q. You thought you had Mr. Kribs pretty well frightened, didn't you?

A. Yes, I think I had Mr. Smith frightened too.

Q. Possibly. Now, Mr. Puter, what methods were pursued with regard to this land with Mr. Kribs and others that were called before Burns in your presence?

Mr. McCOURT.—It hasn't been shown that he was present.

Q. You were generally present with Mr. Burns, were you not, when he interviewed the entrymen and when he had men on the carpet, as the term goes, like Mr. Kribs?

A. Oh, yes. I had seen him interview him.

Q. You were his chamberlain, so to speak? You had charge of the room? A. Oh, no. [750—

788]

Q. Didn't you receive the visitors?

A. No, I didn't have anything to do with that room. I went in there and was there. I had nothing to do with Burns; didn't assist him in any way.

Q. Didn't he consult with you a great deal?

A. Not very much. We wasn't very friendly at that time.

(Testimony of S. A. D. Puter.)

Q. Didn't he, according to your own book, leave it for you to prepare statements to be signed by the entrymen and others who came in to interview him in response to subpoenas of the District Court?

A. There was only one or two on that case. All of those entrymen Burns handled them himself until a certain stage of the game.

Q. But you were present?

A. Well, a few times I was in the room or one of the other rooms in there.

Q. What was the method pursued by him to obtain these statements at that time?

Mr. McCOURT.—Just a moment. I would like to find out whether there were any of the men, with whom he was present, that are involved in this case.

Mr. LIND.—I don't know; I will say that frankly.

Mr. McCOURT.—Burns was engaged here four or five months—two or three years for that matter.

Mr. LIND.—I wish to say to the Court that I don't intend to pursue this line of investigation extensively, but I would like to place the exact facts before the Court in regard to what transpired.

COURT.—So far as this witness knows.

Q. (Read.)

A. Well, these people would be subpoenaed to come before [751—789] him here at the Portland Hotel.

Q. At room what?

A. 10, 11 and 12. And answer questions in relation to their—to those entries that they had taken up and transferred to John A. Willd.

Q. Well, now, in the course of the questioning

(Testimony of S. A. D. Puter.)

did Mr. Burns become violent; did Burns become violent and use severe language?

A. Oh, yes, I have heard him several times.

Q. It has appeared in the testimony here that he sometimes cursed the witnesses—swore at them.

A. Yes, I could hear him from one room to the other, very frequently that way.

Q. Threatened imprisonment? A. Yes, sir.

Q. Taking them before the grand jury?

A. Yes, sir.

Q. As a matter of fact, they were a frightened lot, were they not?

A. I don't know; he attempted to frighten them, but he didn't seem to succeed. He used every method he could but he fell down on it and he would kick them out of the room. They didn't make any affidavits on those threats.

Q. But those that did finally succumb, did he keep at them and keep at them?

A. No, the affidavits that Burns got came of their own accord. He didn't—it wasn't at his solicitation at all.

Q. Mr. Puter, didn't you say to some of those yourself, that the only way that they could secure immunity was by confessing to criminality?

A. It was me that brought them in there in the first place. It wasn't Burns. Burns didn't succeed in getting a single [752—790] one.

Q. And you went and told them that in order to be immune from prosecution before the grand jury and in the Court, they would have to confess to guilt? Didn't you tell them that?

(Testimony of S. A. D. Puter.)

A. They would have to what?

Q. Confess to wrongdoing—confess to guilt?

A. I think I did. I told them to come in and tell the facts in this case.

Q. Well, and didn't you, if the facts didn't suit you, didn't you tell them, "Boys, you have got to show you did wrong. If you didn't do any wrong the Government has nothing to forgive and you are not immune." Didn't you make statements of that character?

A. There were two men, Allie Houser and Andy Nicholls. After Burns failed with those two, I took them in hand and broke them down, and made them tell the exact facts of the case. And so far as all the rest was concerned, they came themselves. Burns didn't get them.

Q. They came after those threats had worked a sufficient length of time and after they had been bulldozed and bullyragged and given to understand they could not get immunity from prosecution until they confessed that they had violated the law?

A. Yes, I guess that is so.

Q. Now, in reading this volume of yours, I run across this statement to which I will call your attention. This is from page 81. I will read: "It was the understanding that these persons were to file on a timber claim and make final proof thereon," etc. This doesn't purport to refer to the claims in suit, but I will read this extract and then inquire about it. In my judgment it is— [753—791]

MR. McCOURT.—What case does that refer to?

MR. LIND.—I don't know the case. It is chapter

(Testimony of S. A. D. Puter.)

6, page 81. It relates to his method of making entry.

Q. You proceed and say: "I likewise had a clear cut agreement with each locator whereby I was to charge them \$150 as my filing fee, with the understanding that I would find somebody willing to loan \$600 on each claim at the time of making final proof, the locators agreeing to execute a mortgage on their claims for that amount as security for the loan. This mortgage was to run one year at ten per cent interest annually, and it was provided further that my location fee was to be deducted from this loan. * * * I was particular in impressing McCullough with the idea that under no circumstances whatever were the locators to offer their claims for sale before making final proof, and that neither the person advancing the \$600 nor myself, had any intention of purchasing the lands after the locators had acquired final title. In general terms, I sought to create the impression that good faith was to be observed all around in the transactions involving the acquisition of title to these lands," etc. Is that true?

A. Exactly true. That is in relation to 108 entries over in Eastern Oregon.

Mr. McCOURT.—I object to that as being an entirely different transaction altogether and there is no rule by which one might assume similar conduct.

Mr. LIND.—That is what I want to find out, whether that outlines the general scheme that he pursued.

Mr. McCOURT.—I object to it as not proper cross-examination and immaterial. You can cross-

(Testimony of S. A. D. Puter.)

examine on the methods which he pursued in the transaction in question, [754—792] rather than state some other proposition and ask if he did not do that way.

COURT.—I think it is legitimate cross-examination of this witness.

Q. Wasn't that substantially the method that you pursued in locating timber and stone entries generally? A. Yes, sir.

Q. You say further on on page 84: "Although I had never intimated to the locators in any way, shape or manner that it was my ultimate purpose to purchase these lands after they had been proved up on, yet I intended doing so all along, as I was well aware that on account of their financial condition my \$600 equity in each claim would make me master of the situation, and that by advancing them from \$200 to \$300 additional, they would only be too glad to execute a deed in favor of whomsoever I might designate." A. Yes, sir.

Q. That was also your plan? A. Exactly.

Q. Now, for instance, in regard to entries in suit, the men—didn't you know any of the men who filed on the claims, the 33 claims involved in this action?

A. Very few—two or three.

Q. Did you have any personal contact with any of them except those you named yesterday?

A. No, sir.

Q. You knew in a general way what class of men they were?

A. Well, when I talked to McKinley—

(Testimony of S. A. D. Puter.)

Q. You relied on McKinley to get the right class, didn't you?

A. Yes, and I instructed him, as stated yesterday, under no circumstances to let the men know or talk to them—

Q. Well, you pursued the same method outlined in your book, [755—793] didn't you—same plan?

A. Yes, only that I had instructed McKinley, in this instance, to convey through other parties, that there would be \$100 in it, but under no circumstances was he to talk to them, and I presume he did that, because I was a little afraid to trust some of them.

Q. You found McKinley pretty reliable? Just about as clever in handling those matters as yourself, did you not? You had perfect confidence in McKinley's cleverness to handle a situation of that kind, did you not?

A. Well, I did, but he got a few people he shouldn't have taken—afterwards. I thought at the time it was all right, but he was a little reckless in selecting men; that was all.

Q. Wasn't it your idea to select men and to talk to them in such a way that they could go there and make the filings and make the mortgage and make the deed, with absolute innocence, on their part, of any intention to violate any law?

A. Certainly; I instructed him to be very careful on that.

Q. That was your plan on all of your proofs, wasn't it? A. Yes, sir, certainly.

Q. And then you expected that, by reason of the

(Testimony of S. A. D. Puter.)

situation, the lands would come to you anyway?

A. Well, I had to pursue that course in order—for my own protection.

Q. Exactly. Now, the lands at that time, that you took up in the Rock Creek country—the timber land involved in this suit—those lands had no market value before you went in there, did they?

A. Well,—

Q. Was there any market value for timber up there at all?

A. Well, there wasn't hardly anywhere at that time. \$5.00, about \$5.50 was the top price. That was as good land as [756—794] anywhere.

Q. You were hawking the best timber lands in the State, obtained on school land selections, all over the East, in 1900, at \$3.50 and \$4.00 an acre, were you not? A. Yes, sir.

Q. As a matter of fact, the first time you ever met Mr. C. A. Smith you tried to interest him in a batch of school lands that were in hock with another man? A man by the name of Baldwin at La Crosse? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. Had you ever met Mr. C. A. Smith before that time?

A. I don't—I may have, but I think that was the first time.

Q. That you had ever seen him in your life. You had at that time a large area of Oregon school land certificates in pledge with a man by the name of Baldwin at La Crosse, Wisconsin, did you not?

A. Yes, sir.

(Testimony of S. A. D. Puter.)

Q. Appleton, Wisconsin, I mean. And the time for redeeming these, if he didn't choose to buy them, was about expired, or would expire shortly?

A. They would expire on the 1st of March, 1900.

Q. And a man by the name of Bohn suggested that you call on Mr. C. A. Smith at Minneapolis; that he might—

A. Who?

Q. A man by the name of Bohn suggested that you call on C. A. Smith at Minneapolis.

A. Yes, sir.

Q. And that he might take those—advance the money to redeem from Baldwin and eventually buy the lands?

A. He was the man that introduced me, I think, to Smith. [757—796]

Q. And you met him by Bohn's introduction?

A. I think, yes—I think I may have met him before, but I believe that was the first time that I had—

Q. As a matter of fact, in the course of your negotiations with Smith on that occasion, didn't you enter into a written agreement with Mr. Smith with reference to redeeming those lands from Baldwin, and subsequently buying them, if found to suit Smith? I call the witness' attention to "Defendants' Exhibit 'K' for Identification." Does that document bear your signature?

A. Yes, sir.

Q. Look at it, and see whether that is not the original contract entered into between you and C. A. Smith on the occasion of your first meeting?

A. Well, that was in December, January or February somewhere. 8th day of February. I was

(Testimony of S. A. D. Puter.)

under the impression it was December or January, but it is dated April 8th—or February 8th.

Q. Well, isn't that the correct date?

A. Well, I guess it is. It would not be signed and acknowledged unless it was. This is the 60 quarter sections. Oh, here is two documents.

Q. That is the list of the lands attached to it.

A. Oh, yes. This is the 60 quarter sections in Coos County.

Q. Yes. Well that is the only school land deal, or school land option that you ever had with Smith, isn't it?

A. Well, I sold him some school land. This land he didn't take at all.

Q. Yes. Well, I will get to that. Don't you recall that Senator Snyder drew that document?

A. Yes, sir.

Q. At your joint request—yours and Smith's?
[758—796½]

A. Yes.

Q. (Mr. McCOURT.) Do you want to introduce it for the purpose of showing the date merely?

Mr. LIND.—Yes, and other provisions in it. I prefer to offer the document, the contract part without the schedules. They are cumbersome and unnecessary. I offer it mainly, your Honor, for the purpose of fixing dates, and the testimony, I offer the contract portion of the exhibit.

Marked Defendants' Exhibit "K."

Q. Now, referring again to your book, I observed you say, "although my initial effort to do business with Mr. Smith terminated in failure." That was

(Testimony of S. A. D. Puter.)

this proposed deal outlined in the option agreement just introduced? That was your initial effort to do business with him? A. Yes, sir.

Q. "It served as an incentive to approach him concerning a proposition of greater magnitude." In this statement you have reference now to the redwood and fir deals? A. Yes, sir.

Q. That afterwards took place between you?

A. Well, I presume I did.

Q. You say: "At the time of our first meeting I had given him an option on 60 quarter sections of timbered school lands, aggregating 9,600 acres, situated in Coos and Douglas Counties, Oregon." That is the contract just introduced in evidence?

A. Yes, sir.

Q. Then, you say, upon your second visit to him when this had fallen through, you took up other matters. Where did you go, if you recall, after this document had been [759—797] executed on February 8th, do you recall where you went?

A. I went directly to San Francisco with a letter of introduction from Smith to Mr. Kribs.

Q. Well, now, let us see whether you went directly to San Francisco. We have some correspondence here that may throw light on this. See if we cannot refresh your memory. Didn't you go from Minneapolis to Chicago?

A. I may have went that way. Mind you, from the 8th of February to the first of March, that is only 22 days that I had to close that deal or lose my option in the 60 quarter sections.

